

Nos. 14648 — 14649

United States
Court of Appeals
for the Ninth Circuit

CIVIL AERONAUTICS BOARD,

Appellant,

vs.

FRIEDKIN AERONAUTICS, INC., Doing Business as PACIFIC SOUTHWEST AIRLINES,

Appellee.

CIVIL AERONAUTICS BOARD,

Appellant,

vs.

CALIFORNIA CENTRAL AIRLINES, INCORPORATED,

Appellee.

Transcript of Record
In Two Volumes

Volume II
(Pages 97 to 371)

Appeal from the United States District Court for the
Southern District of California,
Central Division.

FILE



Nos. 14648 — 14649

United States
Court of Appeals
for the Ninth Circuit

CIVIL AERONAUTICS BOARD,

Appellant,

vs.

FRIEDKIN AERONAUTICS, INC., Doing Business as PACIFIC SOUTHWEST AIRLINES,

Appellee.

CIVIL AERONAUTICS BOARD,

Appellant,

vs.

CALIFORNIA CENTRAL AIRLINES, INCORPORATED,

Appellee.

Transcript of Record
In Two Volumes

Volume II
(Pages 97 to 371)

Appeal from the United States District Court for the
Southern District of California,
Central Division.

In the United States District Court, Southern
District of California, Central Division
No. 16,754-HW Civil

CIVIL AERONAUTICS BOARD,

Plaintiff,

vs.

FRIEDKIN AERONAUTICS, INC., Doing Busi-
ness as PACIFIC SOUTHWEST AIRLINES,
Defendant.

No. 16,755-HW Civil

CIVIL AERONAUTICS BOARD,

Plaintiff,

vs.

CALIFORNIA CENTRAL AIRLINES, INC.,
Defendant.

REPORTER'S TRANSCRIPT OF
PROCEEDINGS

Honorable Harry C. Westover, Judge, Presiding.

Appearances:

For the Plaintiff:

LAUGHLIN E. WATERS,

United States Attorney; by

JOSEPH D. MULLENDER,

Assistant United States Attorney; and

JOHN F. WRIGHT,

Office of Compliance, Civil

Aeronautics Board.

For the Defendant, Friedkin Aeronautics, Inc.:

MESERVE, MUMPER & HUGHES, by
LEWIS T. GARDINER, ESQ.

For the Defendant California Central Airlines,
Inc.:

ALFRED C. ACKERSON, ESQ.,
FRANCIS F. QUITTNER, ESQ.

Monday, July 19, 1954, 10:00 A.M.

The Clerk: No. 8, 16,754-HW Civil, Civil Aeronautics Board vs. Friedkin Aeronautics, Inc., doing business as Pacific Southwest Airlines, hearing on preliminary injunction and hearing motion of defendant for judgment on pleadings, and hearing motion of plaintiff to amend complaint.

No. 9, 16,755-HW Civil, Civil Aeronautics Board vs. California Central Airlines, Inc., hearing on preliminary injunction, hearing motion of defendant for judgment on pleadings.

Mr. Mullender: Ready, your Honor.

Mr. Gardiner: Ready for defendant in the first case.

Mr. Ackerson: We are ready, your Honor.

Mr. Mullender: Your Honor, may I introduce to the court Mr. John Wright for the Civil Aeronautics Board. He has not been admitted to the bar of this court, but has been admitted to the United States Supreme Court and the New York Court of Appeals. He is principally in charge of

this case for the Civil Aeronautics Board. We request the court that Mr. Wright be allowed to argue the matter before the court today.

The Court: He can be admitted to practice here for the purpose of this one case without a general admission. I will be glad to grant your application that he be allowed to appear for this one case. [3*]

Mr. Mullender: Thank you, your Honor.

The Court: Are you ready on this?

Mr. Wright: Ready.

The Court: All right. We will just hold it until we call these other cases.

(Other court matters were taken up.)

The Clerk: No. 8, 16,754-HW Civil, Civil Aeronautics Board vs. Friedkin Aeronautics, Inc.

The Court: I would like to say to counsel in these two cases, there is a question of fact involved. I am not willing to decide questions upon affidavits. I think the parties are entitled to have the witnesses in court so they can be cross-examined. So I am not at all in sympathy with the affidavits on an important case like this.

Mr. Wright: I take it, your Honor——

The Court: Will you speak up, please?

Mr. Wright: From the affidavits, there doesn't seem to be any conflict on the facts.

The Court: If I decide this case upon the affidavits on file, I would immediately decide it against the government. I wouldn't have any hesitancy in doing that upon the affidavits on file.

*Page numbering appearing at top of page of original Reporter's Transcript of Record.

Mr. Wright: In that case, your Honor——

The Court: I think you better ask for a continuance.

Mr. Wright: No. I was going to suggest, in view of the [4] court's feeling about the questions of fact and about the need of witnesses——

The Court: The question is whether or not the defendants have been engaged in transporting passengers in interstate commerce.

Mr. Wright: That is correct.

The Court: They say they haven't. The affidavits on file say they haven't. I don't know why I should ignore those affidavits. I don't know what the facts are in the case. It may be perfectly true that you may be able to establish that the defendants are in the habit of picking up passengers that are brought here from outside the state, sold tickets as a part of the over-all deal, but I am not going to decide that question upon affidavits.

Mr. Wright: As I understood the affidavits. I think Mr. Friedkin—in Mr. Chambers' affidavit, that is one of the investigators of our office, there is contained an admission by Mr. Friedkin to Mr. Chambers that they carried passengers.

The Court: Here is a case in which I would be virtually putting the defendants out of business if I granted your request for a preliminary injunction. I would be virtually putting them out of business. I am certainly not going to decide an important case like this upon affidavits.

Mr. Wright: If your Honor please, we are not asking the defendants be put out of business. [5]

The Court: You are asking for a temporary restraining order.

Mr. Wright: Just as to the interstate passengers, not as to their intrastate operation.

The Court: If they have been doing this for five years, why is it necessary at this time to come in and say, "It is imperative we have a temporary restraining order"?

Mr. Wright: I don't think they have been doing it for five years. We only claim they have been doing it since some time last year.

The Court: Don't they make an affidavit they are doing the same thing now they have been doing for five years?

Mr. Wright: Well, they do and they don't.

The Court: I am sorry, but I think opposing counsel have a right to cross-examine the witnesses involved. When you bring an affidavit and take away from them the right of cross-examination, I don't like to rule upon anything like that. How are you going to get around the finding of the government agency that they were not engaged in interstate commerce? Do you mean to tell me one government agency can have a hearing, produce all the records, and come to the conclusion that they are not engaged in interstate commerce, and another governmental agency can come in and have another hearing and decide they are?

Mr. Wright: I have read the record in that Mediation [6] Board hearing, and I can understand the decision of the Board, but in that proceeding the Airline Pilots Association is asking the Board

to find that the defendant Friedkin was engaged wholly in interstate commerce. We are not asking that in this proceeding. We are only asking them to stop carrying these passengers who come in and go out of the state via Burbank.

The Court: There are so many facts not resolved, I am not going to grant the motion for summary judgment. I am certainly not going to grant a temporary restraining order. We can set the matter down and have a hearing on the merits and find out what the evidence is and come to a conclusion on the merits.

Mr. Wright: That, I think, is the proper thing to do then, your Honor. When could we have that hearing?

The Court: Where are your witnesses?

Mr. Wright: We only have one here today. The rest of them are in Missouri.

The Court: We can have a hearing on Thursday, if you are ready to proceed to trial. We have got a jury trial that will take two days. I can give you Thursday and Friday on this case. I don't think it will take two days.

Mr. Wright: I don't know whether I can get them here or not.

The Court: Where are the defendants' witnesses?

Mr. Gardiner: In the first case, we could possibly have [7] witnesses that early. You are referring to the hearing on the preliminary injunction?

The Court: No. I am considering a hearing on the merits.

Mr. Gardiner: I don't believe we would be prepared to go to trial that early. It was not anticipated that the trial would be accelerated that much.

The Court: This court will be dark in August. I am starting a motion picture case in September. I don't know when I will be able to get to this otherwise. Unless I can try it this week or next, then I can't set it down at all.

Mr. Gardiner: We do have a motion for judgment on the pleadings which, if granted, would dispose of it.

The Court: I won't grant a motion for judgment on the pleadings.

Mr. Gardiner: That is purely a matter of law.

The Court: No, it isn't. There are a lot of things to be determined. I am not going to grant a motion for judgment on the pleadings or the request for the temporary restraining order until I have heard the facts in this case.

Mr. Gardiner: We feel if all the facts alleged in the complaint are true, if we would assume that for the purpose of the motion, then the statute involved does not give the right to grant the relief here asked.

The Court: Do you want to say something?

Mr. Ackerson: I was merely going to say with respect to [8] the trial date, I think next Thursday or Friday would be rather soon for me to be prepared. I realize the condition of your Honor's docket, but I might point out in that connection that Mr. Wright has come from Washington, D. C.,

and I assume he could come again. My client is in the throes of a reorganization proceeding——

The Court: It seems to me the issue here is a very simple one. I don't know how much work it is going to take to get the witnesses together and produce the testimony. Is the defendant selling tickets in interstate commerce?

Mr. Ackerson: We say no.

The Court: It seems to me that you ought to be able to bring your witnesses here and prove everything you have set forth in the affidavit.

Mr. Ackerson: I am sure we can.

The Court: Why can't you bring your witnesses here then?

Mr. Ackerson: I shall try.

The Court: A week is plenty of time to allow you to go out and contact these witnesses, get an affidavit, and get the affidavit signed and on file.

You know who is going to testify and the government knows who is going to testify. About the only witness the government has got is this investigator. Have you got anybody else besides the investigator? [9]

Mr. Wright: The investigators, and some passengers, your Honor, and the persons the investigators talked to, some of whom we may not be able to locate immediately.

I think we would probably subpoena a lot of records.

The Court: Maybe you ought to have some discovery. Maybe you are not ready to go to trial. If

you get into discovery proceedings, you may not be able to go to trial for six or seven months.

Mr. Wright: That's right. I don't believe we would need discovery proceedings, but I will be perfectly frank on the question of going to trial. This is a purely personal thing. I didn't have a vacation last year.

The Court: You represent the government. If you want a vacation, we will hold the matter in status quo.

Mr. Wright: Unfortunately, I have a place rented at the ocean for two weeks, and I wouldn't want to be here instead of at the ocean.

The Court: If I can't hear it either this week or next, it will go over to September. I don't know what the condition of the calendar will be then.

I will have to work it in some time on short notice, and you will have to come out from Washington again.

Mr. Wright: You say you have time available next week, your Honor? [10]

The Court: I don't know. I am starting a motion picture case. I think maybe I can give you a day or two next week. I don't know how fast I will be able to educate my motion picture people.

Mr. Wright: The government could be ready some time next week if the defendants would be ready.

Mr. Ackerson: We will try to be ready.

Mr. Gardiner: We haven't given consideration to the preparation for trial, but we will do the best we can.

The Court: Why do the cases have to be separated? There is no jury in this case. Don't you think I am able to keep the facts as to the airlines separate?

Mr. Gardiner: There is a tremendously involved set of facts. The facts are not involved, but the evidence is quite involved. I believe there might be some confusion in the two cases being heard together. There are some factual differences between the operations of the two companies.

Mr. Wright: That is primarily as to the method of selling tickets.

Mr. Gardiner: No. I believe the companies each sell the tickets in the same manner, but there are some factual differences, all of which I am not familiar with.

The Court: Why can't we do this? I won't grant a preliminary injunction unless I am satisfied in my own mind that the plaintiff will prevail. Why can't we set this matter [11] down for hearing this week upon the preliminary injunction? Then the government will have to produce all its testimony. At that time, if the government isn't able to establish the facts that they allege, then the case will be dismissed. If we have to go on, maybe I can give you another day or two for you to present your testimony.

Mr. Gardiner: That would be satisfactory with Pacific Southwest.

Would the arguments on the various motions and the legal questions be heard in conjunction with that?

The Court: No. I want to know the facts first, and then I will hear your motions relative to the law and the facts. We will set this matter down for hearing Thursday morning at 10:00 o'clock. Have your witnesses here on the preliminary injunction and we may be able to dispose of the case.

Both cases are now continued to Thursday morning.

(Whereupon, the above cases were continued to Thursday, July 22, 1954, at 10:00 o'clock a.m.) [12]

Thursday, July 22, 1954, 10:00 A.M.

The Clerk: No. 1 on the calendar, 16,754-HW Civil, Civil Aeronautics Board vs. Friedkin Aeronautics, Inc.: Further hearing order to show cause, further hearing motion of defendant and hearing motion of plaintiff.

Mr. Wright: The plaintiff is ready, your Honor.

Mr. Gardiner: Defendant is ready, your Honor.

The Clerk: Do you want me to call both cases, your Honor?

The Court: You may call both.

The Clerk: No. 16755-HW Civil, Civil Aeronautics Board vs. California Central Airlines: Further hearing order to show cause, further hearing motion of defendant for judgment on pleadings.

Mr. Wright: Plaintiff is ready, your Honor.

Mr. Ackerson: Defendant is ready, your Honor.

The Court: We will take up 16,754 first. May I have the file?

The Clerk: Yes, your Honor.

The Court: You may proceed.

Mr. Wright: If I understand your Honor's statement, we are going to make a separate record in each case?

The Court: Well, I do not know. I understood the other day that the two cases could not be tried together, that the issues were different. I do not know what the issues are. [14] I do not know how the issues could be any different.

Mr. Gardiner: If your Honor please, the point we were discussing then, I believe it was contemplated we might be going to trial on the merits and my comments with respect to separation had to do with the trial on merits. I see no particular objection to simultaneously hearing the evidence on the orders to show cause.

Mr. Wright: The reason I inquired, your Honor, is that some of these witnesses will have to testify in both cases.

The Court: All right. We will consolidate the two actions for the hearing upon the order to show cause.

You may call your first witness.

Mr. Wright: Call John W. Chambers.

JOHN W. CHAMBERS

called as a witness by and on behalf of the plaintiff herein, having been first duly sworn, was examined and testified as follows:

The Clerk: State your name, please.

The Witness: John W. Chambers.

Direct Examination

By Mr. Wright:

Q. Mr. Chambers, what is your occupation?

A. I am an Air Transport Examiner with the Civil [15] Aeronautics Board.

Q. And will you briefly relate what your chief duties are?

A. My chief duties are to investigate the practices and procedures of the various airlines, freight forwarders, ticket agencies and anyone connected with air transportation.

Q. In the course of your official duties did you have occasion to come to California in January of 1954?

A. Yes, sir, I did.

Q. And what was the purpose of your trip to California in January of 1954, briefly?

A. The main purpose was to check the interstate operations of California Central Airlines and Pacific Southwest Airlines.

Q. And do you recall when you arrived in California?

A. Yes, sir, I do. It was around 6:30, about 6:30 on January the 26th, 1954.

(Testimony of John W. Chambers.)

Q. What means of transportation did you use to come to California?

A. I came from Chicago on United Airlines, Flight 631.

Q. And to Los Angeles?

A. To Los Angeles.

Q. And what airport did you arrive at?

A. The Los Angeles International Airport.

Q. Approximately how long did you remain in California [16] on that investigative mission?

A. Until on or about February 13th.

Q. During the time that you were here, did you visit the offices of Friedkin Aeronautics, doing business as Pacific Southwest Airlines?

A. Yes, sir, I did.

Q. And can you recall about when that was?

A. Yes, sir, it was on February the 4th and 5th.

Q. And what was your purpose in visiting the offices of Pacific Southwest?

A. I wanted to check the records of Pacific Southwest, their manifests of their flights.

Q. Did you request permission from anyone at the offices of Pacific Southwest to examine their records?

A. Yes, sir, I did.

Q. And from whom did you request the permission?

A. Mr. Friedkin.

Q. Had you met Mr. Friedkin before?

A. No, sir, I had not.

Q. Have you since learned what his capacity is in connection with Pacific Southwest Airways?

A. Yes, sir. He is President.

(Testimony of John W. Chambers.)

Q. Do you recall what day it was that you made this visit to the offices?

A. Yes, sir. To my best recollection it was February [17] the 4th and 5th.

Q. And you spoke to Mr. Friedkin?

A. Yes, sir.

Q. On the occasion that you first spoke to him, I assume that was when you requested permission to examine the records. Do you recall what the conversation was?

A. Well, yes, sir. He asked me of course why I wanted to examine the records, and I told him that we were making a survey of the origin and destination of the passengers on his airline.

Q. And in the course of that conversation did you advise Mr. Friedkin of what your employment was?

A. Yes, sir, I did, and presented my credentials to him.

Q. Did you receive permission to examine the records?

A. Yes, sir.

Q. Was space made available in the offices of Friedkin Aeronautics for the purpose of your examination of these records?

A. Yes, sir, it was.

Q. What records did you examine?

A. The flight manifests for the flights of Pacific Southwest Airlines for October, November, and December of 1953.

Q. During the course of your examination of

(Testimony of John W. Chambers.)

these records did you make any photostatic [18] copies? A. Yes, sir, I did.

Q. About how much time did you spend in making the examination?

A. Altogether, close to one working day with part of an afternoon and the following morning.

Q. Before you left the offices of Friedkin Aeronautics did you have any further conversation with Mr. Friedkin? A. Yes, sir, I did.

Q. And when did that conversation occur?

A. On the morning of February the 5th.

Q. And where in the offices of Friedkin did it occur? A. In Mr. Friedkin's office.

Q. Was anyone else present?

A. No, sir, there wasn't.

Q. Will you state to the best of your recollection what you said to Mr. Friedkin and what Mr. Friedkin said to you?

A. Yes, sir. I stated to Mr. Friedkin that I was afraid that possibly the Board might be upset at the number of passengers that he was carrying in interstate commerce. Mr. Friedkin told me that it was his opinion that if he did not fly his aircraft outside of the State of California or if he did not ticket his passengers outside of the state of California that he was not in violaton of any regulations.

Q. Now, I believe you testified previously that you [19] made some photostatic copies of documents. Did you request permission from anyone to make those copies? A. Yes, sir, I did.

(Testimony of John W. Chambers.)

Q. And from whom did you request that permission? A. From Mr. Friedkin.

Q. Now, did you in making these copies make a copy of all of the manifests that you examined?

A. No, sir, I did not.

The Court: How many manifests did you examine?

The Witness: Well, I examined practically all of the flights for the——

The Court: Well, how many? A thousand? A hundred?

The Witness: It would be closer, I would say, to about three hundred.

The Court: All right. How many photographs did you make?

The Witness: Well, altogether I would say about a hundred.

The Court: About a hundred?

The Witness: Yes, sir.

Q. (By Mr. Wright): And some of those photostats that you made are attached to the affidavit which you executed and is filed in this action?

A. Yes, sir.

Mr. Wright: I would like to inquire of the Court whether in referring to these exhibits the Court would like to have [20] each one marked separately.

The Court: Well, I think they ought to be marked. Are these the only copies you have?

Mr. Wright: No, your Honor. Each party has a set of the documents.

The Court: Well, this has been filed with the

(Testimony of John W. Chambers.)

affidavit; however, I have no objection. I will consider the exhibits plus the affidavit if it is satisfactory to counsel. You are making the record here and I want you to make the record as you think it should be made.

Mr. Wright: I think the witness can identify them clearly because in each case each exhibit is marked with the name of the party who makes the affidavit as well as the exhibit number of that set of exhibits attached to the affidavit. So I think the record will be clear.

Mr. Gardiner: We have no objection to the use of the photostats instead of originals, your Honor, but in an affidavit filed when this case was initially heard in May, we indicated that some of the photostats were illegible in our opinion and that you could not make out the writing and in others the pagination of the exhibits did not agree with the affidavits and some of the exhibits were superimposed in the photostat upon other documents to the extent that a picture of the evidence attempted to be portrayed is precluded by their defects. [21]

The Court: What do you mean, when this matter was heard before?

Mr. Gardiner: Well, when it was first called for hearing.

The Court: You mean before the Board?

Mr. Wright: No, before this Court. It was initially scheduled and was continued, and one of the reasons for requesting continuance of this defend-

(Testimony of John W. Chambers.)

ant was that the affidavits were voluminous and not in all intents comprehensive.

The Court: Well, if there is any objection to the exhibits attached to the affidavit I suppose you had better introduce the exhibits in this hearing.

Mr. Wright: Very well, your Honor.

The Court: If you have copies, you may introduce new copies. If you do not have copies, it may be stipulated that the exhibits can be detached from the affidavits for the purpose of being introduced at this hearing. I do not know.

Mr. Wright: I believe that I can tear up my copy of these affidavits.

The Court: All right. You tear up your copy and then introduce it and then we will have it in the order you want it.

Mr. Wright: All right.

Q. (By Mr. Wright): Mr. Chambers, during this investigative [22] trip in January and February of 1954, in addition to the visit which you have already testified to at Friedkin Aeronautics did you visit any other offices of any airlines or ticket agencies in Los Angeles? A. Yes, sir, I did.

Q. And what airlines did you visit?

A. I visited the Great Lakes, U. S. Aircoach and Currey Air Transport.

Q. And will you tell us where Great Lakes' office is located?

A. Yes, sir, I can. It is located in the Lockheed Terminal Building at Burbank.

Q. And with whom did you speak on the occa-

(Testimony of John W. Chambers.)

sion of your visit to Great Lakes Airlines, if anyone?

A. I spoke to Mrs. Ida May Herman.

Q. And did you request from her permission to examine some of the records of Great Lakes Airlines?

A. Yes, sir, I did.

Q. Was that permission granted?

A. Yes, sir, it was.

Q. And did you examine some of the records of Great Lakes Airlines?

A. Yes, sir.

Q. And in the course of that examination did you also make photostatic copies of some of those records? [23]

A. Yes, sir, I did.

The Court: It may be marked for identification as Government's Exhibit 1.

Mr. Wright: Consisting of two photostatic sheets?

The Court: Well, do you want to introduce them as one exhibit or do you want them as separate exhibits?

Mr. Wright: Well, they will have to be received separately but they tie in together. Maybe it would be better to make them one and two.

The Court: All right. Exhibits 1 and 2 for identification only.

Mr. Ackerman: Your Honor, I assume these exhibits have nothing to do with my client.

The Court: I do not assume anything. I do not know anything about them now. After they have been marked for identification they will be shown to you and you can ascertain what they refer to.

(Testimony of John W. Chambers.)

The Clerk: 1 and 2 for identification.

(The photostats referred to were marked Government's Exhibits 1 and 2 for identification.)

The Court: Will you show them to opposing counsel, please, before you start to examine on them?

Q. (By Mr. Wright): Mr. Chambers, I show you Plaintiff's Exhibit marked No. 1 for identification, which purports to be a photostatic copy of a document, and ask you whether or [24] not that photostatic copy was made by you?

A. Yes, sir, it was.

Q. Where was it made?

A. In the offices of Pacific Southwest Airlines in San Diego.

Q. And is it a fair and accurate representation of the original? A. Yes, sir, it is.

Mr. Wright: I will offer the exhibit marked No. 1 for identification in evidence.

The Court: It may be received in evidence.

The Clerk: Exhibit 1.

(The photostat referred to was received in evidence as Government's Exhibit No. 1.)

Q. (By Mr. Wright): Mr. Chambers, I show you Plaintiff's Exhibit marked No. 2 for identification, which purports to be a photostatic copy of two documents in one photostat, and ask you whether or not the photostat was made by you?

(Testimony of John W. Chambers.)

A. Yes, sir, it was.

Q. And where was it made?

A. In the offices of Great Lakes Airlines in Burbank.

Q. That was during the occasion of the examination of records of theirs that you just testified to?

A. Yes, sir.

Mr. Wright: I offer Plaintiff's Exhibit marked No. 2 [25] for identification in evidence.

The Court: It may be received in evidence, Exhibit 2.

The Clerk: Exhibit 2.

(The photostat referred to was received in evidence as Government's Exhibit No. 2.)

The Court: Do you have some more you want marked?

Mr. Wright: Yes, your Honor.

The Court: They may be marked for identification only, Exhibits 3 and 4.

The Clerk: 3 for identification. 4 for identification.

(The photostats referred to were marked Government's Exhibits 3 and 4 for identification.)

Q. (By Mr. Wright): Mr. Chambers, I show you Plaintiff's—

The Court: Will you show it to opposing counsel, please?

Mr. Wright: Oh, I beg your pardon.

(Testimony of John W. Chambers.)

Q. (By Mr. Wright): I show you Plaintiff's Exhibit marked No. 3 for identification, which purports to be a photostatic copy of a document, and ask you whether or not that photostatic copy was made by you? A. Yes, sir.

Q. Where was it made?

A. In the offices of Pacific Southwest Airlines.

Q. And is this a fair and accurate representation of the original document? [26]

A. It is.

Mr. Wright: I offer Plaintiff's Exhibit No. 3 for identification in evidence.

The Court: It may be received in evidence.

The Clerk: Exhibit 3.

(The photostat referred to was marked Government's Exhibit No. 3 in evidence.)

Q. (By Mr. Wright): I show you Plaintiff's Exhibit marked No. 4 for identification, which purports to be a photostatic copy of a document, and ask you whether or not that photostatic copy was made by you? A. Yes, sir.

Q. And where?

A. In the offices of Great Lakes Airlines.

Q. And is it a fair and accurate representation of the original document? A. It is, yes, sir.

Mr. Wright: I offer Plaintiff's Exhibit marked No. 4 for identification in evidence.

The Court: It may be received in evidence.

The Clerk: Exhibit 4.

(Testimony of John W. Chambers.)

(The photostat referred to was received in evidence as Government's Exhibit No. 4.)

Mr. Wright: I request that Plaintiff's Exhibits 5 and 6 be marked for identification. [27]

The Court: They may be marked for identification.

The Clerk: Exhibit 5 for identification and Exhibit 6 for identification.

(The photostats referred to were marked Government's Exhibits 5 and 6 for identification.)

Mr. Gardiner: Just give me the number on the affidavits. That will be sufficient for my purpose. I will not have to inspect these.

Q. (By Mr. Wright): Mr. Chambers, I show you Plaintiff's Exhibit marked No. 5 for identification, which purports to be photostatic copy of a document and ask you whether or not the photostat was made by you? A. Yes, it was.

Q. And where?

A. In the offices of the Pacific Southwest Airlines.

Q. And is it a fair and accurate representation of the original document? A. It is.

Mr. Wright: I offer Plaintiff's Exhibit No. 5 for identification in evidence.

The Court: It may be received in evidence.

The Clerk: Exhibit 5.

(Testimony of John W. Chambers.)

(The photostat referred to was received in evidence as Government's Exhibit No. 5.)

Q. (By Mr. Wright): Mr. Chambers, I show you Plaintiff's [28] Exhibit marked No. 6 for identification, which purports to be a photostatic copy of three documents, and ask you whether or not that photostat was made by you?

A. Yes, sir, it was.

Q. And where was it made?

A. In the offices of Great Lakes Airlines.

Q. And is it a fair and accurate representation of the originals? A. Yes, sir, it is.

Mr. Wright: I offer Plaintiff's Exhibit No. 6 for identification in evidence.

The Court: It may be received in evidence.

The Clerk: Exhibit 6.

(The photostat referred to was received in evidence as Government's Exhibit No. 6.)

Mr. Wright: I request that Plaintiff's Exhibit No. 7 be marked for identification. This one consists of two sheets.

The Court: It may be marked.

The Clerk: 7 for identification.

(The photostat referred to was marked Government's Exhibit No. 7 for identification.)

Mr. Wright: And also No. 8 for identification, also consisting of two sheets.

The Court: It may be marked.

(Testimony of John W. Chambers.)

The Clerk: Exhibit 8 for identification. [29]

(The photostat referred to was marked Government's Exhibit No. 8 for identification.)

Q. (By Mr. Wright): Mr. Chambers, I show you Plaintiff's Exhibit marked No. 7 for identification, consisting of two pages, which purport to be photostatic copies of documents and ask you whether or not those photostats were made by you.

A. Yes, sir, they were.

Q. And where were they made?

A. In the offices of Pacific Southwest Airlines.

Q. Are they fair and accurate representations of the originals? A. They are.

Mr. Wright: I offer Plaintiff's Exhibit marked No. 7 for identification in evidence.

The Court: It may be received in evidence.

The Clerk: Exhibit 7.

(The photostat referred to was received in evidence as Government's Exhibit No. 7.)

Q. (By Mr. Wright): Now, Mr. Chambers, I show you Plaintiff's Exhibit marked No. 8 for identification consisting of two documents, which purport to be photostatic copies, and ask you whether or not those photostatic copies were made by you? A. They were.

Q. And where were they made? [30]

A. In the offices of Great Lakes Airlines.

Q. Are they fair and accurate representations of the originals? A. Yes, sir, they are.

(Testimony of John W. Chambers.)

Mr. Wright: Offer Plaintiff's Exhibit marked No. 8 for identification in evidence.

The Court: It may be received.

The Clerk: Exhibit 8.

(The photostats referred to were received in evidence as Government's Exhibit No. 8.)

Mr. Wright: I request Plaintiff's Exhibit No. 9 be marked for identification and No. 10.

The Court: They may be marked for identification, 9 and 10.

The Clerk: 9 and 10 for identification.

(The documents referred to were marked Government's Exhibits Nos. 9 and 10 for identification.)

Q. (By Mr. Wright): Mr. Chambers, I show you Plaintiff's Exhibit marked for identification No. 9, which purports to be a photostatic copy of a document, and ask you whether or not it was made by you? A. It was.

Q. And where was it made?

A. In the offices of Pacific Southwest Airlines.

Q. And is it a fair and accurate representation of the [31] original? A. It is.

Mr. Wright: I offer Plaintiff's Exhibit marked No. 9 for identification in evidence.

The Court: It may be received.

The Clerk: Exhibit 9.

(The photostat referred to was received in evidence as Government's Exhibit No. 9.)

(Testimony of John W. Chambers.)

Q. (By Mr. Wright): Mr. Chambers, I show you Plaintiff's Exhibit marked No. 10 for identification, which purports to be a photostatic copy of a document, and ask you whether or not the photostat was made by you? A. It was.

Q. And where was it made?

A. In the offices of Great Lakes Airlines.

Q. And is it a fair and accurate representation of the original? A. It is, yes, sir.

Mr. Wright: I offer Plaintiff's Exhibit marked No. 10 for identification in evidence.

The Court: It may be received in evidence.

The Clerk: Exhibit 10.

(The photostat referred to was received in evidence as Government's Exhibit No. 10.) [32]

Mr. Wright: And I request that Plaintiff's Exhibits Nos. 11 and 12 be marked for identification.

The Clerk: 11 for identification. And 12 for identification.

(The photostats referred to were marked Government's Exhibits Nos. 11 and 12 for identification.)

Q. (By Mr. Wright): Mr. Chambers, I show you Plaintiff's Exhibit marked No. 11 for identification, which purports to be a photostatic copy of a document, and ask you whether or not the photostat was made by you? A. It was.

Q. And where?

A. In the offices of Pacific Southwest Airlines.

(Testimony of John W. Chambers.)

Q. And is it a fair and accurate representation of the original? A. It is.

Mr. Wright: I offer Plaintiff's Exhibit marked No. 11 for identification in evidence.

The Court: It may be received in evidence.

The Clerk: Exhibit 11.

(The photostat referred to was received in evidence as Government's Exhibit No. 11.)

Q. (By Mr. Wright): Now, I show you Plaintiff's Exhibit marked No. 12 for identification, which purports to be a photostatic copy of a document, and ask you whether or not [33] the photostat was made by you? A. It was.

Q. And where was it made?

A. In the offices of Great Lakes Airlines.

Q. And is it a fair and accurate representation of the original? A. It is.

Mr. Wright: I offer Plaintiff's Exhibit marked No. 12 for identification in evidence.

The Court: It may be received in evidence.

The Clerk: Exhibit 12.

(The photostat referred to was received in evidence as Government's Exhibit No. 12.)

Q. (By Mr. Wright): Now, Mr. Chambers, referring to Plaintiff's Exhibit No. 1, for the record can you tell us what that is?

A. Yes, sir. This is a passenger manifest of Pacific Southwest Airlines, Flight 90, on October the 5th from Burbank to San Diego.

(Testimony of John W. Chambers.)

Q. Referring now to Plaintiff's Exhibit marked No. 2, can you tell us what that is?

A. Yes, sir. The top of this exhibit is the transfer manifest prepared by Great Lakes Airlines showing the passengers to be transferred from Burbank to San Diego. The manifest is from Great Lakes Airlines, Flight 410, which arrived in Burbank on the 4th of October—or, rather, which [34] originated in New York on the 4th of October and arrived in Burbank on the 5th.

The Court: May I see that a minute?

The Witness: Certainly.

The Court: You say this is a transfer manifest?

The Witness: Yes, sir.

The Court: Well, this gives the addresses of the passengers, the weight. What is San?

The Witness: That is the airline coach for San Diego.

The Court: S-a-n, San Diego?

The Witness: Yes, sir.

The Court: Originated at Burbank?

The Witness: Yes, sir.

The Court: That is, does that mean passengers originated at Burbank?

The Witness: No, sir, those passengers came into Burbank on Great Lakes Airlines, Flight 410, and were to be transported from Burbank to San Diego.

The Court: Well, now, can you tell me when these passengers arrived at Burbank? Did they have to go into Southwest and purchase a ticket?

(Testimony of John W. Chambers.)

The Witness: Yes, sir, they do. They get a ticket. They do not purchase it.

The Court: You mean it has already been paid for?

The Witness: Yes, sir. The fare from New York to [35] San Diego is the same as the fare from New York to Burbank.

The Court: So when they arrive at Burbank they go over to Southwest——

The Witness: Yes, sir.

The Court: ——and pick up a ticket?

The Witness: They check in, yes, sir. Their ticket has been arranged for them by Great Lakes.

The Court: Well, now, the tickets sold by Great Lakes were sold to Burbank?

The Witness: No, sir, Great Lakes makes the ticket out to the final destination.

The Court: San Diego?

The Witness: San Diego, yes, sir.

The Court: So they buy a ticket to San Diego?

The Witness: Yes, sir.

The Court: And go on Great Lakes to Burbank?

The Witness: Yes, sir.

The Court: When arriving in Burbank they go over to Southwest and pick up a ticket from Southwest?

The Witness: Yes, sir.

The Court: And they do not pay anything for the ticket?

The Witness: No, sir.

The Court: Do you know who pays for it?

(Testimony of John W. Chambers.)

The Witness: Yes, sir.

The Court: How do you know? [36]

The Witness: This is the exchange order which is issued by Pacific Southwest. This number, 5159, is the check that Great Lakes issues to Pacific Southwest in payment of this exchange order.

The Court: All right.

Q. (By Mr. Wright): Now, with further reference, Mr. Chambers, to Plaintiff's Exhibit 1, which is a Pacific Southwest passenger manifest, and with particular reference to the column headed "Agt.," can you tell us what the entries in that column mean?

A. Yes, sir. On the first line S.K.C. stands for Skycoach; the same on the second line. The third and fourth lines indicate Air America. The fifth, sixth and seventh lines have a notation, "Bur." which means that the ticket for those passengers was sold by the Pacific Southwest Airlines agent in Burbank; that is, their ticket agent.

The eighth line indicates that the ticket was sold by Pacific Southwest Airlines in San Diego.

The ninth line, I am not sure what that "A.A.-S.A.N." means in there. The tenth line is "U.S.-A.C.," which stands for U. S. Aircoach. And lines eleven and twelve also indicate the ticket was sold by Pacific Southwest in Burbank.

The Court: May I ask a question? You say U.S.A.C. means United States Aircoach. Does that indicate the ticket was sold by United States [37] Aircoach?

(Testimony of John W. Chambers.)

The Witness: That indicates that that passenger was turned over to Pacific Southwest by U. S. Aircoach.

The Court: With or without a ticket?

The Witness: Well, that particular indication would not indicate which. It may have been possible that U. S. Aircoach sold the ticket to the passenger or it might have been possible that U. S. Aircoach turned the passenger over to Pacific Southwest and paid for the passenger's ticket.

The Court: Well, now, where did this manifest originate? Burbank?

The Witness: Yes, sir.

The Court: Then I take it that U.S.A.C. brought the passenger to Burbank?

The Witness: That I can't—

The Court: You do not know?

The Witness: No, sir, I don't. I could not assume that.

The Court: Well, now, S.K.C.; you say that is Skycoach?

The Witness: Yes, sir.

The Court: What Skycoach?

The Witness: Skycoach is a ticket agency which sells tickets for Great Lakes Airlines and for Currey Air Transport to larger regular carriers.

The Court: S.K.C. is a ticket agency; is that right?

The Witness: Yes, sir.

The Court: And this indicates that the ticket agency [38] sold the ticket?

(Testimony of John W. Chambers.)

The Witness: The ticket agency handles the ticket counter at Burbank for Currey and for Great Lakes.

The Court: And Pacific Southwest?

The Witness: I don't know of any arrangement between them to sell their tickets.

The Court: Well, then, S.K.C. indicates that this was a ticket that originated from the agency? We have above, Agent.

The Witness: Yes, sir.

The Court: S.K.C. was the agent?

The Witness: Yes, sir.

The Court: Sold the ticket?

The Witness: Well, they actually never had the ticket, no, sir. Pacific Southwest Airlines issues the ticket, bills Skycoach for it and the individual airline that actually flew the passengers into California then pays Pacific Southwest.

The Court: Well, now, do I understand that the airplane flies a passenger into Burbank?

The Witness: Yes, sir.

The Court: S.K.C. gives the passenger a ticket?

The Witness: No, S.K.C. tells the passenger to check with Pacific Southwest Airlines for continuing transportation to San Diego. [39]

The Court: Oh, they go to S.K.C. and S.K.C. sends them over to Southwest?

The Witness: Well, I believe those arrangements are made in the airplane by the stewardess. She tells

(Testimony of John W. Chambers.)

them on the way in, so it is not necessary for them to check at Skycoach.

The Court: Oh, it is not necessary for them to check it?

The Witness: No, sir.

The Court: Then they either check at Skycoach or they go over to Southwest and they pick up a ticket?

The Witness: Yes, sir.

The Court: And then Southwest bills the airline for the ticket?

The Witness: Yes, sir.

Q. (By Mr. Wright): Mr. Chambers, I show you Plaintiff's Exhibit No. 3, which is a Pacific Southwest Airlines manifest, and ask you to compare it with Plaintiff's Exhibit No. 4 and state whether or not some of the names on both of those exhibits are apparently the names on both of those exhibits are apparently the names of the same individuals or the same passengers.

A. Yes, sir, they are. All of the names on Exhibit No. 4 are also on Exhibit No. 3.

Q. And what is Exhibit No. 4? [40]

A. Exhibit No. 4 is the transfer manifest prepared by Great Lakes Airlines.

Q. And does that exhibit also contain a copy of an exchange order? A. Yes, sir, it does.

Q. And with reference now to the exchange order, are there any notations on there which would indicate whether or not payment was made for the transportation covered by that exchange order and

(Testimony of John W. Chambers.)

in what manner? A. Yes, sir.

Mr. Gardiner: Your Honor, I would like to object to this line of questioning on the ground that the exhibits, being in writing, speak for themselves; and, furthermore, that the question calls for——

The Court: Well, now, that is perfectly true. They speak for themselves, but they are Greek as far as I am concerned. Somebody has to explain.

Mr. Gardiner: The questioning has brought forth answers which consist of assumptions, beliefs and probabilities and speculations about which the witness is not necessarily qualified.

The Court: I will allow you when the time comes to interpret these documents for yourself. To me they do not mean anything. They are just documents. Somebody has got to explain them. It may be that there are different [41] explanations. I don't know.

The objection is overruled.

Do you remember the question?

The Witness: Yes, sir, I do.

In the upper righthand corner of the exchange order is the number 5160, which is the check number issued by Great Lakes Airlines to Pacific Southwest Airlines on October 7th, 1953.

The Court: May I interrupt just a moment? You say the check number. You mean the check in payment for the tickets?

The Witness: Yes, sir.

The Court: That is the kind of check you are talking about?

The Witness: Yes, sir.

(Testimony of John W. Chambers.)

The Court: All right. Go ahead.

Q. (By Mr. Wright): Have you finished your answer?

A. I believe I have finished it.

Q. And is there any notation on that exchange order which would indicate any tickets that were issued?

A. Yes, sir, there is. Also in the upper right-hand corner are the numbers 5502-07, which were the ticket numbers issued to the passengers.

The Court: You mean it was the numbers of all the tickets? A ticket was issued to each passenger?

The Witness: Yes, sir. [42]

The Court: And that includes the numbers?

The Witness: Yes, sir.

Q. (By Mr. Wright): And also with further reference to Exhibit 4, Mr. Chambers, in the column headed "Ticket Number" there also appear some numbers there. Are they the numbers of the tickets which are indicated on the exchange order or are they some other tickets?

A. They are another ticket number. They are the ticket numbers of the passengers, of the tickets that were used to fly from their point of origin outside of the state of California into Burbank.

Q. And do those numbers appear on Plaintiff's Exhibit No. 3? A. No, sir.

Q. Do the ticket numbers indicate on the exchange order on Plaintiff's Exhibit No. 4 appear on Plaintiff's Exhibit No. 3?

A. Yes, sir, they do.

(Testimony of John W. Chambers.)

Q. And are they opposite the names of the individuals as they appear on the transfer manifests?

A. They are, yes.

Q. And also with reference to Plaintiff's Exhibit 3, in the lower portion thereof, on the diagonal line there appears the language, "Five Throughs." Can you explain what that means? [43]

A. Yes, sir. That means that there were five passengers aboard the airplane that boarded north of Burbank and were continuing on the same aircraft south of Burbank.

The Court: That is Southwest, is it?

The Witness: Yes, sir.

The Court: May I see that just a minute?

The Witness: Certainly.

The Court: And the other one?

The Witness: Yes, sir.

The Court: Now, with reference to Exhibit 4, do these passengers originate outside the state of California?

The Witness: Yes, sir, they did.

The Court: Where did they originate? Do you know?

The Witness: Not definitely, no, sir; but they would be somewhere between New York and Kansas City.

The Court: And these five passengers' final destination was San Diego?

The Witness: Yes, sir.

The Court: They were flown into Burbank, and

(Testimony of John W. Chambers.)

at Burbank what happened to them? What did they do? Do you know?

The Witness: Yes, sir. I know the usual procedure.

The Court: What is the usual procedure, then?

The Witness: What individual passengers did I can't say; but the usual procedure was to deplane from the Great Lakes Airline flight at Burbank and to go to the baggage claim [44] area, pick up their baggage and then go to Pacific Southwest counter and check in there for their continuing flight to San Diego.

The Court: Well, I understand that when they fly into Burbank planes are unloaded at Burbank; that is, planes from outside the state?

The Witness: Yes.

The Court: Baggage is taken out?

The Witness: Yes.

The Court: And then each passenger has to go and pick up his own individual baggage?

The Witness: Correct, yes, sir.

The Court: And then that passenger, individually, or with the help of a redcap, then carries the baggage over to the Southwest?

The Witness: Yes, sir.

The Court: And then at Southwest they pick up a ticket?

The Witness: Yes, sir.

The Court: Do they buy the ticket?

The Witness: No, sir, they don't.

The Court: Do they pay anything for the ticket?

(Testimony of John W. Chambers.)

The Witness: No, sir, they don't.

The Court: Southwest gives them a ticket; that is, presents them a ticket?

The Witness: Yes, sir.

The Court: And who pays Southwest? [45]

The Witness: The carrier that brought the passengers into Burbank.

The Court: Southwest bills the carriers?

The Witness: Yes, sir, they issue that exchange order.

The Court: And then Southwest carries them down to San Diego?

The Witness: Yes, sir.

Q. (By Mr. Wright): Now, Mr. Chambers, your testimony so far in relation to Plaintiff's Exhibits 3 and 4 has been with regard to the five or five and a half passengers that appear on both Exhibits 3 and 4. By reference to the column headed "Agt." on Plaintiff's Exhibit No. 3, are you able to state whether or not any passengers were carried on that Pacific Southwest flight who were furnished apparently by transcontinental carrier other than Great Lakes? A. Yes, sir.

Q. Will you so state?

A. On lines 1 to 9 the notations N.A.A., which stands for North American.

The Court: Can we have the stipulation that Great Lakes is engaged in transporting passengers in interstate transportation?

Mr. Wright: Plaintiff will stipulate.

(Testimony of John W. Chambers.)

Mr. Ackerson: What is that, your Honor? I am awfully sorry. [46]

The Court: Well, we have here testimony relative to Great Lakes. Are you willing to agree that Great Lakes was engaged in transporting passengers in interstate transportation?

Mr. Ackerson: I assume they were, your Honor.

The Court: Well, I assume they were, too.

Mr. Ackerson: But I do not know. I do not know anything about Great Lakes.

The Court: You don't?

Mr. Ackerson: Goodness, no. Hearsay.

The Court: All right. I might ask the witness.

You have been referring to Great Lakes. What is Great Lakes? Do you know Great Lakes?

The Witness: Yes, sir, I do.

The Court: What is it?

The Witness: It is a large irregular carrier engaged in interstate commerce of passengers.

The Court: Where is the flying from and to?

The Witness: Well, its most used route is from New York to Chicago to Kansas City to Burbank.

The Court: Now, do you know of your own knowledge that they fly that route?

The Witness: Yes, sir, I do.

The Court: All right.

I notice it is 11:00 o'clock and we usually take a [47] midmorning recess. We will now recess until ten minutes after 11:00.

(Brief recess.)

(Testimony of John W. Chambers.)

Q. (By Mr. Wright): Mr. Chambers, I do not recall whether I asked you previously, but on this investigative trip in January and February of 1954, in addition to Great Lakes and Friedkin Aeronautics, which I believe you have already testified you visited, did you visit any other airline offices?

A. Yes, sir, I did.

Q. More than one?

A. Yes, sir, quite a few, although not all of them of course were involved in this particular investigation.

Q. Did you visit the Curry Air Transport?

A. Yes, sir, I did.

Q. And where is their office located?

A. Their office is located in the Great Lakes Airlines hangar at Burbank.

Q. And did you see anyone at that office?

A. Yes, sir, I did. I spoke to Miss Tillie Gamble.

Q. Did you examine any of the records in that office?

A. Yes, sir, I did. I examined their flight manifests for the period from—well, October and November and December of 1953.

Q. And is that the same period that was covered in [48] your examination at the offices of Friedkin Aeronautics? A. Yes, it was.

Q. And do you know what Curry Air Transport is?

A. Yes, sir. Curry Air Transport is a large irregular carrier.

(Testimony of John W. Chambers.)

Q. And do you know what type of aircraft it operates?

A. Yes, sir. It operates DC-4 aircraft.

Q. And do you know whether or not it was operating during the period covered by your examination?

A. Yes, sir.

Q. And do you know of your own knowledge what points in the United States, if any, it was serving?

A. Yes, sir, I do. It was serving New York, Chicago, Kansas City and Burbank.

Q. In other words, the same route that you have already testified Great Lakes was serving?

A. Yes, sir.

Q. And while in the offices of Curry Air Transport did you make photostatic copies of any documents?

A. Yes, sir, I did.

Q. And what documents did you photostat?

A. I photostated their passenger manifests for their flights, their transfer manifests for passengers to be transferred to points other than Burbank in California and copies of Pacific Southwest Airlines' exchange orders. [49]

Q. Did you make photostats of all such documents that you found in the office of Curry Air Transport?

A. No, sir, I didn't.

Q. What method of selection did you use or what criteria did you use in making the photostats that you did make?

A. Well, as closely as I could I picked the same

(Testimony of John W. Chambers.)

periods that I had already used in the offices of Pacific Southwest Airlines.

Mr. Wright: I request that these documents be marked Plaintiff's Exhibits——

The Court: 13 and 14.

Mr. Wright: ——13 and 14 for identification.

The Clerk: 13 and 14 for identification.

(The photostats referred to were marked Government's Exhibits 13 and 14 for identification.)

Q. (By Mr. Wright): Mr. Chambers, I show you Plaintiff's Exhibit marked 13 for identification, which purports to be a photostatic copy of two documents, and ask you whether or not the photostat was made by you. A. Yes, sir, it was.

Q. And where was it made?

A. I would like to refresh my memory on this, but I believe this was made in the offices of Great Lakes Airlines.

Q. At the same time as the previous exhibits? [50] A. Yes, sir.

Q. And is it a fair and accurate representation of the original? A. Yes, sir, it is.

Q. Now, I show you Plaintiff's Exhibit marked No. 14 for identification, which purports to be a photostatic copy of a document, and ask you whether or not that photostat was made by you?

A. Yes, sir, it was.

Q. And where was it made?

A. In the offices of Pacific Southwest Airlines.

(Testimony of John W. Chambers.)

Q. And is it a fair and accurate representation of the original? A. Yes, sir, it is.

Mr. Wright: Plaintiff offers Exhibits 13 and 14 for identification in evidence.

The Court: They may be received in evidence.

The Clerk: Exhibits 13 and 14.

(The photostats referred to were received in evidence as Government's Exhibits Nos. 13 and 14.)

Mr. Wright: May these three photostats be marked for identification as Plaintiff's Exhibit 15?

The Court: Exhibit 15 for identification.

Mr. Wright: And the single photostat as Plaintiff's Exhibit 16 for identification? [51]

The Court: For identification.

The Clerk: 15 for identification and 16 for identification.

(The photostats referred to were marked Government's Exhibits 15 and 16 for identification.)

Q. (By Mr. Wright): Mr. Chambers, I show you Plaintiff's Exhibit marked No. 15 for identification, which purports to be photostatic copies of documents in three sheets and ask you whether or not the photostats were made by you?

A. Yes, sir, they were.

Q. And where was it made?

A. The first sheet was made in the offices of Curry Air Transport. The second sheet was also made in the offices of Curry Air Transport. Pardon

(Testimony of John W. Chambers.)

me. All of them were made in the offices of Curry Air Transport.

Q. Then I show you Plaintiff's Exhibit No. 16 for identification, which also purports to be a photostatic copy of a document, and ask you whether or not that photostat was made by you.

A. Yes, sir, it was.

Q. And where was that made?

A. In the offices of Pacific Southwest Airlines.

Q. And is it a fair and accurate representation of the original? A. It is.

Mr. Wright: I offer Plaintiff's Exhibits 15 and 16 [52] for identification in evidence.

The Court: They may be received in evidence.

The Clerk: Exhibits 15 and 16.

(The photostats referred to were received in evidence as Government's Exhibits 15 and 16.)

Q. (By Mr. Wright): Now, Mr. Chambers, from an examination of Plaintiff's Exhibits 15 and 16 are you able to state whether or not they are in any way related and, if so, what is the relationship?

A. Yes, sir. I notice that four of the names on Exhibit 15 are the same as four of the names on Exhibit 16.

Q. Will you state the names of those four individuals, please?

A. Yes, sir, I will: Krause, two Roseks and Thiebar.

Q. Now, will you state what Exhibit 15 is?

A. The first page of Exhibit 15 is a photostat of

(Testimony of John W. Chambers.)

the passenger manifests of Curry Air Transport, Flight 1510 from Chicago to Burbank.

Q. Have you finished your answer?

A. Yes.

Q. Now, will you state for the record what Plaintiff's Exhibit 16 is?

A. Exhibit 16 is Pacific Southwest Airlines' manifest for Flight 90 on October the 16th from Burbank to San Diego.

Q. Now, I believe you already stated that the names on [53] lines 1, 2 and 3 of Plaintiff's Exhibit 16, that is, Krause and two Roseks, which appear on Plaintiff's 16 also appear on Plaintiff's Exhibit 15. From an examination of Plaintiff's Exhibit 15 are you able to state where these three persons originated their flight?

A. Yes, sir. They originated in Chicago, Illinois.

Q. All three of them? A. Yes, sir.

The Court: I assume they came out to Burbank and disembarked at Burbank?

The Witness: Yes, sir.

The Court: Then what happened after they got to Burbank?

The Witness: Then they went to San Diego on Pacific Southwest.

The Court: And followed the same procedure which you have outlined?

The Witness: Yes, sir.

The Court: That is, they took the baggage off of the plane they were on, walked over to Southwest, picked up the tickets?

(Testimony of John W. Chambers.)

The Witness: Yes, sir.

The Court: And then continued down to San Diego?

The Witness: Yes, sir.

The Court: And Southwest then billed the airplane line for the price of the ticket? [54]

The Witness: Yes, sir.

Mr. Wright: I request that these three photostats will be marked as Plaintiff's Exhibit No. 17 for identification.

The Court: It may be marked 17 for identification.

Mr. Wright: And another photostat No. 18 for identification.

The Court: 18 for identification.

The Clerk: 17 for identification and 18 for identification.

(The photostats referred to were marked Government's Exhibits 17 and 18 for identification.)

Q. (By Mr. Wright): Mr. Chambers, I show you Plaintiff's Exhibits marked for identification No. 17—

The Court: Before you get to that, let me ask one question of this witness, if I can. I notice on the various exhibits that you have introduced, particularly on Exhibit 15, there is an exchange order, Pacific Southwest Airlines. There appears in printing "Fare 11.70." 11.70 is crossed out and above it is written in pencil "5.55." Do you know what the

(Testimony of John W. Chambers.)

billing was? Was it for the regular fare at 11.70 or was it for 5.55?

The Witness: Well, sir, you will notice that on the bottom of that exhibit there is a "Burbank" and then there is something crossed off and "San." after it, and that 11.70 was the fare to whatever that is that is crossed off, possibly [55] either Oakland or San Francisco.

The Court: This is not the fare, then, from Burbank to San Diego, 11.70?

The Witness: No, sir, it isn't.

The Court: So they used a schedule of a different fare and crossed out the printing and wrote in the 5.55?

The Witness: Yes, sir.

The Court: Well, do you know of your own knowledge whether that is the regular fare?

The Witness: Yes, sir, I believe it is without tax, the regular fare without tax, San Diego from Burbank.

The Court: Well, they have got the tax here. I think, if I can read it, 53 cents. Then I understand that the billing from Southwest to these airplane companies was at the regular fare?

The Witness: Yes, sir, minus a commission.

The Court: Well, now, they paid the commission to the agent for selling the tickets, I assume?

The Witness: Yes, that's correct.

The Court: Well, now, you testified on one of the exhibits a little while ago that a check was sent.

The Witness: Yes, sir.

(Testimony of John W. Chambers.)

The Court: That is, a check for the fare?

The Witness: Yes, sir.

The Court: I do not remember what exhibit it was, but was [56] that a check for the entire fare, that is, the regular normal fare?

The Witness: Minus the commission that Pacific Southwest paid to, in this instance, Curry Air Transport for turning the passengers over to them.

The Court: Do they pay the regular seller's commission?

The Witness: Yes, sir.

The Court: In other words, if they turned the passenger over to Southwest then Southwest will give them credit for what they would pay a regular ticket agent for selling the ticket?

The Witness: That is correct, yes, sir.

The Court: All right. You may proceed.

Q. (By Mr. Wright): Mr. Chambers, I show you Plaintiff's Exhibit marked No. 17 for identification, which consists of three pages of photostats and ask you whether or not those photostats were made by you. A. Yes, sir, they were.

Q. And where were they made?

A. In the offices of Curry Air Transport.

Q. And are they fair and accurate representations of the original? A. Yes, sir.

Q. And I show you Plaintiff's Exhibit marked for identification No. 18, which purports to be a photostatic [57] copy of a document, and ask you whether or not that was made by you.

A. Yes, sir, it was.

(Testimony of John W. Chambers.)

Q. And where was that made?

A. In the offices of Pacific Southwest Airlines.

Q. And is it a fair and accurate representation of the original? A. Yes, it is.

Mr. Wright: I offer Plaintiff's Exhibits marked for identification 17 and 18 in evidence.

The Court: They may be received in evidence.

The Clerk: Exhibits 17 and 18.

(The photostats referred to were received in evidence as Government's Exhibits 17 and 18.)

Q. (By Mr. Wright). Can you tell us, if you will, Mr. Chambers, and if you know, what Exhibit 17 consists of?

A. Yes, sir. The first page of Exhibit 17 is the passenger manifest of Curry Air Transport's Flight No. 1910 from La Guardia Field, New York, to Burbank.

Page 2 is Curry Air Transport's manifest for the same flight for passengers boarding in Chicago with destination Burbank.

Page No. 3 is the transfer manifest showing the passengers to be transported to San Diego, and at the bottom of that exhibit is the exchange order of Pacific Southwest [58] Airlines.

Q. And are you able to state what Plaintiff's Exhibit No. 18 is?

A. Yes, sir. Exhibit No. 18 is Pacific Southwest Airlines' manifest for Flight 90 on the 19th of October, from Burbank to San Diego.

Q. By reference to Plaintiff's Exhibits 17 and

(Testimony of John W. Chambers.)

18 are you able to state whether or not some of the names of the passengers on those exhibits appear on both exhibits? A. Yes, sir, they do.

Q. Will you state their names, please?

A. Yes, sir; Laux——

Q. As you give the name will you also, if you can, from Exhibit 17 state where the passengers originated?

A. Yes, sir. Mr. Laux, who originated in Chicago; Mr.—if I may, I will spell this—K-r-a-n-c-z-y-k, who also originated in Chicago; Mr. Fournier originated in La Guardia; and Mr. Abalofi originated in La Guardia.

Q. And those persons also appear on Exhibit 18?

A. Yes, sir, they do.

Q. And are there ticket numbers on both Exhibits 17 and 18?

A. Yes, sir, there are.

Q. And do Exhibits 17 and 18 show the same ticket numbers for the trip from Chicago to Burbank and Burbank to [59] San Diego or are they different numbers?

A. They are different numbers.

Q. On page 3 of Exhibit 17 is there anything on that page which would indicate the ticket numbers which appear on Exhibit 18?

A. Yes, sir, there are. At the top of the exchange order are the numbers 4526-29, which are the same numbers as the ticket numbers appearing on Exhibit 18.

(Testimony of John W. Chambers.)

The Court: Before you go to another, I want to ask a question.

Now, when these airplane lines sell a ticket back in New York or Chicago, do they sell the ticket to San Diego or do they sell it to Los Angeles?

The Witness: They sell it to San Diego, sir.

The Court: The ticket reads "To San Diego"?

The Witness: Yes, sir.

The Court: La Guardia to San Diego?

The Witness: Yes, sir.

The Court: Have you seen the ticket?

The Witness: I have.

The Court: Have you any copies of the tickets?

The Witness: No, sir, I don't.

The Court: Have you seen the tickets?

The Witness: I have seen several tickets, yes, sir, and I—— [60]

The Court: They are not sold from La Guardia to Los Angeles?

The Witness: No, sir.

The Court: Or to Burbank? They are sold from La Guardia to San Diego?

The Witness: San Diego, yes, sir.

Q. (By Mr. Wright): Mr. Chambers, during this investigation in January and February of 1954, did you also visit the offices of U. S. Aircoach at Lockheed Terminal? A. Yes, sir, I did.

Q. And will you state, if you know, what U. S. Aircoach is?

A. Yes, sir. U. S. Aircoach is a large irregular carrier.

(Testimony of John W. Chambers.)

The Court: That may be marked 19 and 20 for identification.

The Clerk: 19 and 20 for identification.

(The photostats referred to were marked Government's Exhibits 19 and 20 for identification.) [63]

Q. (By Mr. Wright): Mr. Chambers, I show you Plaintiff's Exhibit marked No. 19 for identification, which purports to be a photostatic copy of a document, and ask you whether or not that was made by you? A. Yes, sir, it was.

Q. And where?

A. In the offices of U. S. Aircoach.

Q. And is it a fair and accurate representation of the original? A. It is, yes, sir.

Q. Now I show you Plaintiff's Exhibit marked No. 20 for identification which also purports to be a photostat, and ask you whether or not that was made by you? A. Yes, sir, it was.

Q. And where was it made?

A. In the office of Pacific Southwest Airlines.

Q. And is it a fair and accurate representation of the original? A. It is, yes, sir.

Mr. Wright: I offer Plaintiff's Exhibits 19 and 20 for identification in evidence.

The Court: They may be received in evidence, 19 and 20.

(The photostats referred to were received in evidence as Government's Exhibits 19 and 20.)

(Testimony of John W. Chambers.)

Q. (By Mr. Wright): Will you state for the record what [64] Exhibit 19 is?

A. Yes, sir; Exhibit 19 is a transfer manifest of U. S. Aircoach.

Q. Does any date appear thereon?

A. Not on—well, actually a date does not appear on the manifest, no, sir; but through the flight number I can tell that the flight originated on the 4th of October.

Q. And what is Exhibit No. 20?

A. Exhibit 20 is a passenger manifest of Pacific Southwest Airlines on October the 5th for Flight 90 from Burbank to San Diego.

Q. And I believe Exhibit 19 contains the name of one passenger, does it not?

A. Yes, sir, it does.

Q. And does the name of that passenger appear on Exhibit 20?

A. Yes, sir, it does.

Q. And is there a ticket number on Exhibit 20 for that passenger?

A. Yes, sir.

Q. What is the ticket number?

A. The ticket number is 99466.

Q. And does that ticket number appear anywhere on Exhibit 19?

A. Yes, sir, it does. It appears on the exchange order [65] on Exhibit 19.

Q. With reference to Exhibit 19 are you able to state where that passenger, whose name I believe you said was Collin, originated?

A. Not definitely, no, sir. Yes—I take that back. Yes, I can. He originated in Chicago.

(Testimony of John W. Chambers.)

The Court: I want to go back for just a minute. Excuse me. You say the tickets are sold from La Guardia to San Diego, but on the flight out, somebody, the stewardess, told them to go over to Southwest and pick up the ticket to San Diego?

The Witness: Yes, sir.

The Court: Is any written memorandum given?

The Witness: No, sir, there isn't.

The Court: It is just an oral direction?

The Witness: Yes, sir.

The Court: Well, when they get over to Southwest how do they identify themselves?

The Witness: Well, Pacific Southwest is given a copy of the transfer manifest by the originating airline so that they then know who the passengers coming from, in this instance, U. S. Aircoach, will be.

The Court: Now, let's define a term. You have used the term "transfer manifest." What do you mean by transfer? What is the meaning of transfer?

The Witness: That is the name that has been given to [66] these manifests by the carriers and it indicates a manifest that shows the names of the people who are to be transferred from, in this instance, U. S. Aircoach to Pacific Southwest, also in this instance.

The Court: It refers to the transfer from one airline to another?

The Witness: That's correct, yes, sir.

The Court: It does not refer to the transfer from La Guardia to Burbank, for instance?

(Testimony of John W. Chambers.)

The Witness: No, sir. That's correct.

The Court: But from one airline to another?

The Witness: Yes, sir.

The Court: All right.

Mr. Wright: May these two photostats be marked for identification as Plaintiff's Exhibit No. 21?

The Court: It may be marked 21.

The Clerk: 21 for identification.

The Court: 21 for identification only. 21 consists of two sheets.

(The photostats referred to were marked Government's Exhibit 21 for identification.)

Mr. Wright: And I am also asking that another sheet be marked 22 for identification.

The Court: It may be marked.

The Clerk: 22 for identification. [67]

(The photostat referred to was marked Government's Exhibit 22 for identification.)

Q. (By Mr. Wright): Mr. Chambers, I show you Plaintiff's Exhibit marked for identification 21, which purports to be two photostatic copies, and ask you whether or not they were made by you?

A. Yes, sir; they were.

Q. And where were they made?

A. In the offices of U. S. Aircoach.

Q. And are they fair and accurate representations of the original? A. Yes, sir; they are.

Q. And I show you Plaintiff's Exhibit marked

(Testimony of John W. Chambers.)

No. 22 for identification, which also purports to be a photostatic copy, and ask you whether or not that was made by you? A. Yes, sir, it was.

Q. And where was that made?

A. In the offices of Pacific Southwest Airlines.

Q. And is it a fair and accurate representation of the original? A. Yes, sir; it is.

Mr. Wright: I offer Plaintiff's Exhibits 21 and 22 for identification in evidence.

The Court: They may be received in evidence.

The Clerk: Exhibits 21 and 22. [68]

(The photostats referred to were received in evidence as Government's Exhibits 21 and 22.)

Q. (By Mr. Wright): Now, will you state for the record what Exhibit 21 is?

A. Exhibit 21 are passenger manifests—pardon me. Strike that. Are transfer manifests of U. S. Aircoach for the passengers to be transferred from their Flight 108W to Pacific Southwest Airlines for transportation to San Diego.

Q. And what is Exhibit 22?

A. Exhibit 22 is the passenger manifest for Pacific Southwest Airlines Flight 12 from Burbank to San Diego.

Q. And does Exhibit 22 contain the names of the passengers that appear on Exhibit 21?

A. Yes, sir; they do.

Q. And can you tell us what the exchange order that appears on the second page of Exhibit 21 was used for?

(Testimony of John W. Chambers.)

A. Yes. That was used to bill U. S. Aircoach for four passengers' travel from Burbank to San Diego.

Q. And is there any notation or record on Exhibit 21 on the second page there which would indicate how payment was made, if it was made?

A. No, sir.

Q. Can you state from an examination of Exhibit 21 the city of origination of the passengers that appear thereon that also appear on [69] Exhibit 22?

A. Yes, sir; I can. Mr. Gloster and Mr. Kettel originated at La Guardia Field in New York. Mr. Sagen originated in Philadelphia and Mr. George in Chicago.

Q. Now, Mr. Chambers, these exhibits which you have identified and from which you have been testifying in relation to Pacific Southwest, U. S. Aircoach, Curry Air Transport and Great Lakes are some of the photostats that were taken by you during the course of this investigative mission?

A. Yes, sir.

Q. There were more?

A. Yes, sir.

Q. Are you able to state whether or not they contain substantially the same information as these that have already been introduced?

A. Yes, sir; they do.

Q. Now, to go back to the earlier part of the testimony, Mr. Chambers—

The Court: Before you go back I have got one other question I want to ask this witness.

(Testimony of John W. Chambers.)

Now, you said a little while ago—I am sorry, but I want to get this piecemeal and I have to go back and get it while I think about it—you said a little while ago that these passengers were told to go over to Southwest after they got to Burbank. No written memorandum was given?

The Witness: That's correct. [70]

The Court: Now, these exchange orders. Were the exchange orders ever given to the passengers?

The Witness: No, sir.

The Court: Where did they originate?

The Witness: The exchange order originates at the ticket counter of Pacific Southwest Airlines.

The Court: You mean to say that the exchange order is made by Pacific Southwest?

The Witness: Yes, sir.

The Court: At the time a passenger comes in?

The Witness: Yes, sir.

The Court: And then it is sent over to the originating carrier?

The Witness: Yes, sir.

The Court: The exchange order says, "To Be Exchanged for Reservation and Flight Ticket at Pacific Southwest Airlines." Now, your testimony is that this exchange order is never given to the passenger?

The Witness: That's right, sir.

The Court: No written memorandum is given to the passenger?

The Witness: No, sir.

(Testimony of John W. Chambers.)

The Court: They are orally told to go over to Pacific Southwest and pick up a ticket?

The Witness: That's right; yes, sir.

The Court: And they never see the exchange orders so far [71] as you know?

The Witness: So far as I know they don't; yes, sir.

The Court: And they never see the exchange order so far as you know?

The Witness: So far as I know they don't; yes, sir.

The Court: They never have it in their possession?

The Witness: Correct. I did see in one instance a ticket that was sold to a passenger in San Diego for passage west, a stamp on the ticket which said, "On Arrival at Burbank Check In at the Office of Caribbean American," and in that case the passenger's route was from San Diego to Burbank, and then the large regular carrier from Burbank to the East; and in that one instance there was a notation on the ticket that he was to check in at the office of Caribbean American, which is a large regular carrier. But in other instances of westbound passengers I have not seen any written notation.

The Court: Well, of course, that is the only documentary evidence we have, the westbound passengers?

The Witness: That's correct.

The Court: And those passengers who originate

(Testimony of John W. Chambers.)

outside the state come into Burbank and then are transferred to San Diego?

The Witness: Yes, sir.

Q. (By Mr. Wright): Mr. Chambers, during the course of your January and February investigation, did you, among [72] other things, go to Lockheed Air Terminal to observe the arrival of westbound transcontinental flights?

A. Yes, sir; I did.

Q. And do you recall any specific occasion?

A. Yes, sir; I do. On the morning of February the 1st I was at Lockheed Air Terminal and observed the arrival of a flight of North American Airlines arrive at Burbank. I observed the passengers deplane and go to the baggage area and pick up their baggage and of that planeload of passengers, twelve then took their baggage to the ticket counter of Pacific Southwest, checked in there, rechecked their baggage and they later boarded a Pacific Southwest Airlines flight for San Diego.

The Court: May I ask a question? How much time elapsed then from the time they arrived until they checked in with Pacific Southwest and took the Pacific Southwest plane?

The Witness: The service was very good, sir. They didn't wait very long; about, I would say, not longer than fifteen minutes.

The Court: Fifteen minutes from the time they got off the plane?

The Witness: From the time they got their baggage. It took them quite some time to get their bag-

(Testimony of John W. Chambers.)

gage, and then fifteen minutes after they checked in at the Pacific Southwest counter the flight was ready to go. [73]

The Court: Then there was no waiting period at all? That is, just the time that was consumed in transporting themselves and the baggage from one plane to the other?

The Witness: Yes, sir; about fifteen additional minutes.

Q. (By Mr. Wright): Did you observe whether or not the passengers were issued any tickets at Lockheed, either by a ticket agent at the North American counter or at the Pacific Southwest counter?

A. Well, none of those passengers went to the North American counter, and at the Pacific Southwest counter they were given identification to board the Pacific Southwest flight.

Q. And do you know what the identification was?

A. No, sir, I don't; but I saw them show something at the gate as they went through.

Q. Do you know whether it was a ticket?

A. No, sir; I don't.

Q. Now, I believe you testified previously that you arrived at Los Angeles International Airport on January 26, 1954?

A. Yes, sir.

Q. And about what time?

A. It was close to 6:30 in the evening.

Q. And I believe you testified, for the record, from [74] where did you come?

A. From Chicago.

Q. And by what means?

(Testimony of John W. Chambers.)

A. On United Airlines, Flight 631.

Q. Did you meet any other member of the Board staff at Los Angeles International Air Terminal that evening?

A. Yes, sir; I did.

Q. And who was it?

A. It was Franklin Oelschlager.

Q. And what is his capacity with the plaintiff?

A. He is the Chief Investigator of the Office of Compliance.

Q. And had you traveled from Chicago with him?

A. No, sir; I hadn't. It was quite a coincidence. I was surprised to see him. He had just arrived from St. Louis.

Q. Do you know how he traveled to Los Angeles International Airport?

A. Yes, sir; I do. He came on TWA.

Q. Did either you or Mr. Oelschlager at that time arrange for any onward transportation from Los Angeles to any other point?

A. Yes, sir; I did. I went to the ticket counter of Pacific Southwest Airlines and asked for information regarding their next flight to San Diego. [75]

Q. This was Los Angeles International Airport?

A. Yes, sir; it was.

Q. And what counter?

A. The counter of Pacific Southwest Airlines.

The Court: Do they maintain an office there?

The Witness: No, sir; they don't.

The Court: What do you mean by counter, then? Did they have a Pacific Southwest Airlines sign?

(Testimony of John W. Chambers.)

The Witness: No, sir. I was confused and I am sorry. But it was the office of California Central Airlines.

The Court: Oh, California Central Airlines.

Mr. Ackerson: May I make a suggestion, your Honor? It is about noon, and I would like to make it at this time if I may. Your Honor, at this stage it is perfectly all right with us to conduct the two hearings at the same time, but I do think the evidence ought to be somewhat departmentalized as we go along. Might I suggest for clarity of the record that this present witness finish with Southwest Airlines before he starts on Cal Central? Otherwise we are going to have——

The Court: Are you getting ready to start on Cal Central?

Mr. Wright: As far as this witness is concerned, I have finished with Pacific Southwest.

The Court: Well, I think we ought to finish up with one of the companies at a time so there won't be any confusion. [76] I think the suggestion is good.

May I inquire about your progress? How much time do you anticipate it is going to take to present your witnesses?

Mr. Wright: I had hoped, your Honor, by a streamlining process, to complete it today. However, we were unable to serve subpoenas on two witnesses. The Marshal was unable to locate them, but I believe they will be served this afternoon or tomorrow morning. With the exception of those

(Testimony of John W. Chambers.)

two witnesses I think I can complete the rest of my case this afternoon.

The Court: Well, now, have you any other witness relative to Southwest other than this witness?

Mr. Wright: Yes, I have, your Honor; several.

The Court: Several other witnesses?

Mr. Wright: That's right.

How long do you anticipate it will take to put on your evidence?

Mr. Gardiner: We have four witnesses, your Honor. I believe we can put them on in half a day.

The Court: You do not think there is any question that we can finish tomorrow?

Mr. Ackerson: Well, I don't know. I have two or three witnesses. I will put on as few as possible, your Honor. I have three or four available and I intend to call about two [77] of them. I think we can do it in less than half a day. I mean, I can do my part of it in less than half a day.

The Court: Well, perhaps we had better reconvene at 1:30. That's what I am trying to find out. It is a question of time. It would be just as easy to reconvene at 1:30 as it would be at 2:00.

Mr. Wright: It is perfectly satisfactory with the plaintiff.

The Court: All right.

Mr. Wright: I have one question, your Honor. As I understand your previous statement, you wish to conclude the case separately against each defendant?

The Court: Well, I would think so. In other

(Testimony of John W. Chambers.)

words, I think Southwest should cross-examine this witness relative to Southwest before you proceed with the other matter.

Mr. Wright: In that case, I would just like to request permission. I am through with this witness as far as Pacific Southwest is concerned, but I would like to recall him for more direct in connection with the other case.

The Court: All right. Then Pacific Southwest can cross-examine right after lunch.

Mr. Gardiner: Thank you, your Honor.

The Court: We will now take a recess until 1:30 o'clock this afternoon.

(Whereupon at 12:00 o'clock an adjournment was taken until 1:30 o'clock p.m. of the same day.) [78]

Thursday, July 22, 1954—1:30 P.M.

JOHN W. CHAMBERS

resumed the stand and, having been previously first duly sworn, was examined and testified further as follows:

The Court: You may cross-examine.

Cross-Examination

By Mr. Gardiner:

Q. Mr. Chambers, when you visited the offices of Pacific Southwest Airlines in San Diego for the purposes of your investigation, did you receive the co-operation of the company representatives?

(Testimony of John W. Chambers.)

A. Yes, sir; I certainly did.

Q. Did they make available to you all the documents and records which you requested?

A. Yes, sir; they did.

Q. I believe you testified that you requested the flight manifests of Pacific Southwest Airlines for the fourth quarter of 1953?

A. Yes, sir.

Q. Approximately how many manifests did they furnish you?

A. There was about a drawer full in a regular transfer [79] file cabinet.

Q. That would be a drawer full, three feet deep, would you say?

A. Yes, sir. If I remember correctly that entire drawer was filled with manifests for that quarter.

Q. And do you review those manifests?

A. A great number of them, yes, sir.

Q. Approximately how many?

A. Well, I would say as a round guess about three hundred of them.

Q. I think you testified you made photostats of a hundred of them?

A. Approximately, yes, sir.

Q. There was a good deal of testimony directed today to the designation Skycoach. Is that the full name of a company or concern, do you know?

A. I believe the name of it is Skycoach Airlines Agency, Inc.

Q. Skycoach Airlines Agency?

A. Yes, sir.

Q. I believe you testified that is the ticket agency

(Testimony of John W. Chambers.)

and not a carrier? A. Yes, sir.

Q. And are you familiar with Safeway Aircoach Agency? A. Yes, sir; I am. [80]

Q. Is that an agency? A. Yes, sir.

Q. And I believe you testified that North American Airlines is also an agency?

A. North American Airline Agency Corporation, Inc., is an agency, yes, sir.

Q. And I believe at that time there was also an American Air Bus Agency?

A. Yes, there was.

Q. That was also a ticket agency, not a carrier?

A. Yes, sir.

Q. Do you know if all of those agencies are still in business in Burbank?

A. I don't believe all of them are, no, sir.

Q. Do you know which ones are no longer operating?

A. As of the present date I couldn't say. I do know that the last time I was in California that American Air Bus was no longer operating as such.

Q. Do you know if Safeway Aircoach is operating at present in Burbank?

A. The last information I had they were, yes, sir.

Q. What was the date of that information?

A. Well, I know that they had—the gentleman who was their representative at one time was at the Terminal when I was there in January. Whether he actually was operating or [81] whether they had flights coming in or not, I couldn't say.

Q. In testifying with respect to one of the ex-

(Testimony of John W. Chambers.)

change orders, that on Exhibit 13, the designation SKC appears in the box, "Agent's Validation," and there is a designation in the upper right-hand corner of a number and a date. I believe you testified that that was the date of payment of the sum represented by an exchange order; is that correct?

A. It was the date of the check.

Q. Yes. And to whom was that payment made?

A. To Pacific Southwest Airlines.

Q. And who was it paid by?

A. By Great Lakes Airlines.

Q. Great Lakes Airlines. Not Skycoach?

A. Great Lakes Airlines, as I understood it from Mrs. Herman, yes, sir.

The Court: As you understood it from whom?

The Witness: Mrs. Herman. She is the Secretary-Treasurer of Great Lakes.

Q. (By Mr. Gardiner): Did you see the check?

A. No, sir; I didn't.

Q. Are you familiar with the way the defendant, Pacific Southwest Airlines, pays its commissions to ticket agencies?

A. I believe I am, yes, sir.

Q. Is it your understanding—— [82]

A. Pardon me. I would like to get the question straight, if I may. Do you mean agencies other than the ones here involved?

Q. No.

The Court: He means ticket agencies generally.

The Witness: Well, I don't know Pacific Southwest's procedure with all ticket agencies.

(Testimony of John W. Chambers.)

Mr. Gardiner: Well, I withdraw that question, then.

Q. Are you familiar with the activities of the ticket agents and agencies of whom you spoke this morning? A. Yes, sir.

Q. Do they sell tickets on only certain carriers which they represent or do they sell tickets on other carriers?

A. They sell tickets for only carrier which they represent.

Q. Do you know whether or not these ticket agencies of which we are speaking sell tickets on Pacific Southwest Airlines?

A. In some instances, yes, sir.

Q. I don't follow that.

A. For instance, if I may give a for instance, Skycoach Agency in San Diego sells Pacific Southwest tickets.

Q. Are you familiar with the fact that you can buy a ticket from that agency in San Diego to San Francisco on Pacific Southwest? [83]

A. Yes, sir.

Q. And, correspondingly, a return trip from San Francisco to San Diego? A. Yes, sir.

Q. When Skycoach sells a ticket for a flight on Pacific Southwest Airways, do you understand who receives the commission on the sale of that ticket?

A. Originally, yes. Yes, sir.

Q. Do you understand that the ticket agent as an agent receives a commission for the sale of the ticket? A. Yes, sir.

(Testimony of John W. Chambers.)

Q. And is it your understanding that the carrier who may transport the passenger does not receive a commission for selling a ticket?

A. I do not know that the carrier does not or that the representatives of the carrier do not. No, sir; I do not know.

Q. From your observations at Lockheed Air Terminal at Burbank have you observed any non-scheduled transcontinental air carrier as distinguished from travel agencies maintained ticket offices or counters in the lobby?

A. That is a difficult question to answer. The name of the agency generally appears above the ticket counter, yes, sir.

Q. Thank you. Is it your understanding that Great [84] Lakes carries or operates flights between points in California in addition to its transcontinental flights?

A. Yes, sir.

Q. Is it your understanding that Great Lakes upon occasion continues its incoming transcontinental flights to points such as Oakland and San Diego?

A. Yes, sir.

Q. And is it your understanding that North American Airlines or the carriers, the tickets of whom are sold by North American Airlines ticket agency, also continue flights to points beyond Burbank in California?

A. Yes, sir.

Q. And do you have the same understanding with respect to outbound flights, namely, that those nonscheduled carriers also have flights originating in San Diego or Oakland which come to Burbank?

(Testimony of John W. Chambers.)

A. I know of none originating in San Diego, sir; but Oakland, yes, I do.

Q. As far as you know the flights go to San Diego and the irregular carriers return empty then?

A. No, sir. I haven't testified that I am aware of any of the flights of irregular carriers continuing north of San Diego.

Q. Are you familiar with the fact that the Curry Air Transport also maintains flights which continue from [85] Burbank to Oakland?

A. Yes, sir.

Q. And that North American Airlines maintains flights from Burbank to Oakland, carriers?

A. Carriers represented by North American Airlines.

Q. Represented by North American Airlines?

A. Yes.

Q. When you inquired of Curry Air Transport as to their flight manifests during the fourth quarter of 1953, approximately how many were offered for your inspection at Burbank?

A. There was about three-quarters of a file drawer of manifests.

Q. About two feet or so? A. Yes, sir.

Q. And did you review those manifests?

A. Yes, sir; I did.

Q. Did a number of those manifests indicate that the passengers listed thereon were continuing their flight from Burbank to Oakland on Curry Air Transport after having come in from out of state?

A. Yes, sir.

(Testimony of John W. Chambers.)

Q. And was there a substantial number of such manifests which showed that type of transportation? A. Yes, sir; there were. [86]

Q. I believe you testified this morning, Mr. Chambers, that the Skycoach ticket agency in arranging for the transportation of passengers from Chicago and Kansas City to Burbank and other points in Los Angeles sometimes utilizes local carriers in California to take them to their ultimate destination in California.

A. (Witness nods affirmatively.)

Q. Did you discuss that subject with representatives of Skycoach? A. Yes, sir.

Q. And when were those discussions held and with whom?

A. On January the 25th at the Skycoach ticket counter at Midway Airport in Chicago with Mr. John Davy.

Q. And did Mr. Davy tell you that a passenger boarding a plane at Chicago for which he sells those tickets could be told when he boarded the train which carrier would take him from, say, Burbank to Oakland? A. Yes, sir; he did.

Q. And did he say that they furnished a ticket on that carrier to the passenger at Chicago?

A. No, sir; he didn't.

Q. Did he tell you the name of the carrier which the passenger would use to go from Burbank to Oakland? A. Yes, he did.

Q. What was that? [87]

A. Pacific Southwest.

(Testimony of John W. Chambers.)

Q. Did he state that the lines on which he sold tickets also ran shuttle flights to Oakland?

A. He said that he did not know how the passengers got to Oakland.

Q. You just testified, I believe, that he told you they went on Pacific Southwest?

A. San Diego.

Q. Did you discuss that subject with the representative of Skycoach at Burbank?

A. This subject of how——

Q. Which carrier would be utilized for the intrastate passage? A. Yes, sir.

Q. Did that individual tell you, as Mr. Davy had, that at the time the flight left Chicago a new carrier would be utilized for the California transportation?

A. Well, I didn't ask that specific question of the person to whom I was speaking, no, sir.

Q. You did not discuss that subject?

A. No, sir. When the determination is made as to which carrier shall be used between Burbank and San Diego it would probably vary in the first instance and I didn't ask the question of exactly when the decision was made.

Q. Well, did you receive any information that indicated [88] that that decision was not made until shortly before the interstate carrier arrived at Burbank?

A. I received no definite information to that effect, no, sir.

Q. Let me ask a question: Do you know of any

(Testimony of John W. Chambers.)

other carrier that transported passengers from Lockheed to San Diego, that is, passengers who come in on an interstate carrier? Do you know of any other local carrier that transported like Southwest?

The Witness: Well, I made no—found no instances of the interstate carriers that I checked where Southwest Airlines had been used or any other carrier other than the two involved here today.

The Court: Well, those are the only two that you know anything about?

The Witness: That's correct. In some isolated instances I believe that ships of other irregular carriers were used to transport their passengers from Burbank to either San Diego or to Oakland or San Francisco.

The Court: But as far as you know the carriers in question used either one of the two defendants who are in court today?

The Witness: That's correct, yes, sir.

The Court: Did both of the defendants serve San Diego?

The Witness: Yes, sir; they do. [89]

Q. (By Mr. Gardiner): Did your interrogation of representatives of the carrier operating under the Skycoach designation result in your receiving information that sometimes one of those carriers continued its own flight to Oakland?

A. Yes, sir.

(Testimony of John W. Chambers.)

Q. Then did they indicate the proportion of the California passengers who were transported on those shuttle flights as distinguished from either of the defendant carriers?

A. That is percentage proportion?

Q. Yes.

A. No, sir. The determination, according to them, was dependent upon the number of passengers they had to transport to Oakland.

Q. In other words, if there was a sufficient amount of passengers to warrant, say, the use of a DC-3, they would be transported on one of their own carriers' planes?

A. If the DC-3 were available, yes, sir.

Q. Do you know whether U. S. Aircoach is presently operating at Burbank?

A. I am of the opinion they are not operating out of Burbank.

Q. Did any of the representatives of these travel agencies with whom you discussed this question mention the [90] name of an individual by the name of Blackwell as a carrier of passengers from Burbank to Oakland?

A. No, sir.

Q. I believe you testified that you conversed with Mrs. Herman, Great Lakes Airline?

A. Yes, sir.

Q. Did not Mrs. Herman tell you that sometimes it is not possible to designate the carrier for the California transportation until after the interstate carrier has arrived at Burbank or has come within thirty minutes of landing at Burbank?

(Testimony of John W. Chambers.)

A. She didn't mention that, no, sir.

Q. She didn't. Did any of the other individuals with whom you discussed this question indicate that the selection of the carrier was not made until approximately that time?

A. Well, there was an indication to that effect, yes, sir, particularly with the carrier that did not fly as close to schedule as some of the others. Of course, they would have to wait until they saw what time their aircraft was going to arrive in order to make arrangements for the continuing portion of the passengers' flight.

Q. These incoming carriers by very definition arrive at varying hours, do they not?

A. Some of them do, yes, sir. [91]

Q. And is it not a fact that there are sometimes delayed flights on the nonscheduled carriers coming into Burbank so that there are arrivals, let us say, in the afternoon instead of at 9:00 a.m., as you have indicated?

A. That's correct, yes, sir.

Q. Then the selection of a carrier to provide transportation within the state of California and the selection of a flight would not always be possible eight or ten hours in advance of a passenger's arrival, would it?

A. It would be set up, as I gather, from the regular routine of the carrier as to what his provisions were. Of course, as far as the number of passengers are concerned who are to be turned over and the reservations having been made, it is necessary that they wait until the flight has left its desti-

(Testimony of John W. Chambers.)

nation next prior to its arrival in Burbank before they can make any reservations.

Q. I take it from that that the substance of your answer is generally in the affirmative; it would not always be possible to determine which flight of a California carrier would be utilized?

A. Specifically, the answer to your question, of course, is, Yes; but to qualify it, in most instances, particularly North American and the North American carriers and the Great Lakes and the Curry would know what time their flight is going to arrive every day in Burbank. [92]

Q. The manifests issued by these irregular carriers are prepared when? A. At—

Mr. Wright: Just a minute. Could we clarify that? As to which manifests?

Mr. Gardiner: Manifests covering the transcontinental passage.

Mr. Wright: The original manifests?

Mr. Gardiner: Yes.

The Witness: Well, in most instances of the carriers that I have observed the manifest is made up prior to the time that the passengers who have made reservations are intended to check in. Then at flight time, after it is determined how many passengers actually have shown up to claim their reservations, the additional names of passengers who are not there for the flight are crossed off.

Q. (By Mr. Gardiner): And when is the manifest on the California carrier made up from your observation? A. I have no knowledge.

(Testimony of John W. Chambers.)

Q. You did not check those dates?

A. I didn't check the time, no, sir. I have seen no one from either California Central or Pacific Southwest make up a flight manifest.

Q. I believe you testified this morning that one of the manifests of Pacific Southwest Airlines, which contained [93] no information at the top, nevertheless contained sufficient information to determine when it was made up. Do you recall that testimony?

A. No; that was not quite the testimony. The testimony was that I could tell the date of the flight by the flight number. You see, the flight number is made up of the number of the month and the number of the day that it departs from its originating station. The flight number, if I remember correctly, was 108, and from 108 you can know that the flight originated on the 8th of October.

Q. That, you say, applies to the flights of Pacific Southwest Airlines?

A. No, sir; of the irregular carriers.

Q. Your testimony this morning, I believe, pertained to that of Pacific Southwest manifests which contained no information? A. No, sir——

Mr. Wright: I do not recall that testimony. If it was in connection with this specific exhibit, I think it ought to be produced.

Mr. Gardiner: I think it is immaterial. I will abandon that line of interrogation.

Q. Generally speaking, would you say that the manifest of the California passengers was made

(Testimony of John W. Chambers.)

up one day after the date of the manifest on the transcontinental carrier? [94] A. Yes, sir.

Q. And this transfer manifest to which you made reference, when would that be prepared?

A. It has been prepared before the flight of the interstate carrier arrives in Burbank on the aircraft.

Q. Do you know how much before?

A. It is between the last stop before arrival in California and its arrival in California.

Q. Were you told of any instances in which it is prepared by the agency at the Burbank Terminal?

A. I believe in some instances that is done, yes, sir.

Q. Do you know whether that is the case more often than not?

A. No; I don't know which is more often the case.

Mr. Gardiner: I have no further questions, your Honor.

The Court: Any other questions?

Mr. Wright: I have one, your Honor.

Redirect Examination

By Mr. Wright:

Q. Do you know whether or not Lockheed Air Terminal has any policy regarding the rental of ticket counter space at Lockheed Air Terminal to ticket agents?

A. Yes, I do. Lockheed has a policy not to rent space to ticket agencies. [95]

(Testimony of John W. Chambers.)

Mr. Wright: That is all.

The Court: You may step down.

Mr. Wright: Pardon me, your Honor. Are we to proceed now with P.S.A., or is this witness going to be permitted to testify as to California Central?

The Court: I presume we had better proceed with this witness while he is on the stand and proceed with the other.

Mr. Gardiner: Your Honor, could I have one question on recross?

The Court: All right.

Mr. Gardiner: I was waiting for that last point brought out on redirect.

Recross-Examination

By Mr. Gardiner:

Q. Notwithstanding this policy to which you have just made reference, is it not a fact from your observation that there are a number of ticket agencies selling transcontinental space on large, irregular carriers presently operating in Burbank?

A. That again is a difficult question to answer because the people who are appearing at those ticket counters and are representing the irregular carriers, I am not familiar with from whom they receive their paycheck.

Q. You did testify earlier, I believe, that as [96] of last fall there were several agencies operating in Burbank?

A. At—

Q. Lockheed Air Terminal?

(Testimony of John W. Chambers.)

A. At the terminal. What I testified was that the name of the agency now is permitted to hang over the ticket counter.

Mr. Gardiner: Thank you. That is all, your Honor.

Direct Examination

By Mr. Wright:

Q. Mr. Chambers, to return again to the day of your arrival in January in California, I believe you said it was January 26th? A. Yes.

Q. And you came on United Airlines?

A. Yes, sir.

Q. From where? A. Chicago.

Q. And that was in the International Airport?

A. Yes, sir.

Q. And at International you met another representative of the Plaintiff's Office of Compliance?

A. Correct, sir.

Q. Whose name was——

A. Oelschlager, Franklin Oelschlager. [97]

The Clerk: Is this the other case?

Mr. Wright: That's right.

The Clerk: California Central.

Mr. Ackerson: I wonder if we could separate these Cal Central exhibits by letter.

The Clerk: Well, your Honor, there are two different case numbers. Now, on the Exhibit tag I will put the number of the case, 16755, Civil Aeronautics vs. California Central, Plaintiff's 1.

Mr. Ackerson: Thank you.

(Testimony of John W. Chambers.)

Mr. Wright: And may these two photostats be marked as Exhibit 1?

The Clerk: For identification.

The Court: It may be marked Exhibit 1 for identification.

(The photostats referred to were marked Government's Exhibit 1 for identification.)

Q. (By Mr. Wright): Mr. Chambers, after you met Mr. Oelschlager, did you purchase transportation from Los Angeles to San Diego?

A. Yes, sir; I did.

Q. And was Mr. Oelschlager with you at the time? A. Yes, sir.

Q. Did he also purchase transportation?

A. Yes, sir.

Q. I show you Plaintiff's Exhibit marked No. 1 for [98] identification, which purports to be two photostatic copies of documents, and ask you whether or not the originals of those, which are a part of the original affidavit, are documents which you purchased for transportation to San Diego?

A. Yes, sir.

Q. And it was purchased from whom?

A. From the agent on duty at the California Central Airlines counter.

Q. Where? A. International Airport.

Q. Did you have any conversation with the agent? A. Yes, sir; I did.

Q. Was there one agent or more than one agent?

A. The first time that I contacted the ticket

(Testimony of John W. Chambers.)

counter there was one agent there, and the second time there were two.

Q. And the first time you went to the ticket counter did you buy the ticket then or later?

A. No, sir; I didn't. The first time I went to the ticket counter I just got information concerning their next flight to San Diego.

Q. Did you request a reservation?

A. No, sir; I didn't. I just got the information. I requested the reservation later.

Q. And you say you returned to the ticket counter later? [99]

A. Yes, sir.

Q. The same day?

A. Yes, sir.

Q. And approximately how long after your first visit?

A. I would presume about an hour.

Q. And was Mr. Oelschlager with you?

A. He was with me the second time, yes, sir.

Q. While you were at the counter on the second visit, did you inquire or ascertain the names of the agents who were at the counter?

A. Yes, sir; I did.

Q. And how did you learn that information?

A. Well, one of the agents called the other agent, Winslow, and we asked—I asked the second agent what his name was, and he said Kenny.

Q. And from which agent did you make the purchase?

A. From Agent Kenny.

Q. At or before or during the time you were making the purchase, did you have some conversation with the agents?

A. Yes, I did.

Q. Was Mr. Oelschlager present?

(Testimony of John W. Chambers.)

A. Yes, sir; he was.

Q. Can you state what you recall of that conversation?

A. Well, the first time that I went to the ticket counter I said that I had just arrived from Chicago on [100] United Airlines and was anxious to get to San Diego and asked if they could tell me when their next flight was and if there was space available; and the agent told me that the next flight was at 9:25, if I remember correctly, and that there was space available on it.

A second time when I went back to the ticket agency to make the reservation, I told the agent on duty, who was Kenny at that time, that I had run into a buddy in the terminal building who had just come in from St. Louis on TWA and he was anxious to go to San Diego, too, and asked him to make two reservations for us on the next flight.

Q. This was at the time you made the purchase or reservation?

A. This was at the time we made the purchase and the reservation also.

Q. Did both of the ticket agents, Kenny and Winslow, as far as you know, hear your statement that you had just come in from Chicago?

A. Yes, sir; they had. And then after we had purchased the ticket and were waiting for the arrival of the flight we discussed with the agent our trips from Chicago and Mr. Oelschlager discussed his trip with the agent from St. Louis. We mentioned several things about the weather and about

(Testimony of John W. Chambers.)

the snow en route and we also talked of the aircraft and how we enjoyed the flight. [101]

Q. Did either one of the agents say anything to indicate to you that you might be engaged in interstate air travel? A. No, sir.

Q. Did they ask for your address?

A. No, sir.

The Court: Mr. Wright, let me see if I understand your position. It is your contention, is it, that if a party buys a ticket from Chicago to New York or Philadelphia and comes to Los Angeles and disembarks from a plane here in Los Angeles and goes to a local carrier who transports within the state that that local carrier in transporting that passenger is then engaged in transporting passengers in interstate traffic?

Mr. Wright: That is our position, your Honor.

The Court: Then it is your position also that the local carrier must ascertain and make certain that the passenger who wants accommodations has not within a reasonable time concluded a trip from outside the state?

Mr. Wright: Yes, for their own protection.

The Court: Isn't that throwing quite a burden upon the local carrier?

Mr. Wright: Well, I think the evidence will show that at one time they were doing just that.

The Court: Well, I am asking you now. I want to know [102] what your position is. Now, this witness has described a typical experience. I expect it happens a great many times. A person buys a

(Testimony of John W. Chambers.)

ticket from New York to Los Angeles; when he gets here, he wants to go to Oakland or San Francisco or El Centro.

Mr. Wright: That's right.

The Court: He goes to a local carrier, buys a ticket. The local carrier sells it.

Mr. Wright: If it is a continuation of his original trip to his original destination.

The Court: Well, now, original destination. He bought a ticket to Los Angeles.

Mr. Wright: You are referring to this witness?

The Court: No. I am just supposing a person buys a ticket to Los Angeles and when he gets here he decides to go to San Diego.

Mr. Wright: If that happened, I wouldn't say it was interstate air transportation, but the vast majority of the cases that we are concerned with here——

The Court: Then, you mean, the passenger has to have an intent when he starts transportation to go on beyond Los Angeles?

Mr. Wright: That is right, your Honor, as evidenced by the transportation. What the intent of the passenger is.

The Court: How is a local carrier to know what the [103] intent of the passenger is?

Mr. Wright: By the ticket.

The Court: Well, a man gets off the plane. He goes over to Southwest and says, "I have just come from New York. I want to go down to San Diego." Now, how does the local agent say, "What was

(Testimony of John W. Chambers.)

your intent when you left New York? Was it your intent to go to San Diego or was it your intent to stop here in Los Angeles?"

Mr. Wright: That is right, your Honor. The purpose of this particular testimony and the transportation involved is in part to show that there is no screening or check.

The Court: No what?

Mr. Wright: Screening or check, at least at the present time, on the part of these two defendants as to whom they carry.

The Court: Then it is your contention that these local carriers have to set up an information bureau and screen their passengers when they come in to find out where they came from, when they arrived and what their intent was when they started?

Mr. Wright: No. If they do that, that is up to them. It is our contention that they should not carry interstate passengers, and if it was an occasional or casual thing we would not be here today. But I think that after it is in ninety-nine per cent of our testimony will—— [104]

The Court: Well, let's assume that it is not a casual matter. A person is buying a ticket in Chicago, from Philadelphia, Kansas City or New Orleans to Los Angeles and they arrive either at Burbank or arrive at the International. Now, after they arrive, within a reasonable time, let's say a couple of hours, three hours—I don't know what a reasonable time is—they then purchase a ticket to

(Testimony of John W. Chambers.)

San Diego or to Oakland, San Francisco or El Centro. Now, you contend that the trip from Los Angeles to Oakland or San Diego or El Centro is a continuation of that interstate transportation?

Mr. Wright: That is a part of our contention in this case, your Honor.

The Court: All right. You may proceed.

Q. (By Mr. Wright): Will you tell us now, Mr. Chambers, what occurred subsequent to the purchase by you and Mr. Oelschlager of the tickets from the defendant, California Central?

A. Yes. Well, about 10:00 o'clock our flight arrived and we boarded the flight and took off and flew to San Diego.

The Court: On that ticket?

The Witness: Yes, sir.

Mr. Wright: Plaintiffs offer the exhibit marked for identification.

The Court: It may be received in evidence as Exhibit 1. [105]

The Clerk: Exhibit 1.

(The photostats referred to were received in evidence as Government's Exhibit 1.)

The Court: Let me ask just one other question: You paid \$5.55 for your ticket?

The Witness: Plus tax, yes, sir.

The Court: Plus tax?

The Witness: Yes, sir.

Mr. Wright: I request that these two documents

(Testimony of John W. Chambers.)

be marked as Plaintiff's Exhibit No. 2 for identification.

The Court: It may be marked Exhibit 2 for identification.

The Clerk: Exhibit 2.

(The photostats referred to were marked Government's Exhibit 2 for identification.)

Mr. Wright: And a single sheet as Exhibit No. 3 for identification.

The Court: Exhibit 3 for identification.

The Clerk: Exhibit 3 for identification.

(The photostat referred to was marked Government's Exhibit 3 for identification.)

Q. (By Mr. Wright): Mr. Chambers, I show you Plaintiff's Exhibit marked No. 2 for identification, which purports to be two photostatic copies of documents, and ask you whether or not those photostats were made by you? [106]

A. Yes, sir, they were.

Q. And where were they made?

A. In the office of Curry Air Transport.

Q. And that was during the visit which you have testified about this morning?

A. Yes, sir.

Q. And are they a fair and accurate representation of the originals?

A. Yes, sir.

Q. Now I show you Plaintiff's Exhibit No. 3 for identification, which purports to be a photostatic sheet including two documents, and ask you whether or not that is a photostat that was made by you.

(Testimony of John W. Chambers.)

A. Yes, sir.

Q. And where was that made?

A. In the offices of Curry Air Transport.

Q. And is it a fair and accurate representation of the original? A. It is, yes, sir.

Mr. Wright: I offer Plaintiff's Exhibits 2 and 3 for identification in evidence.

The Court: They may be received.

Mr. Ackerson: If your Honor please, I would like to make an objection to this Exhibit 3 containing those two documents. [107]

The Court: Are you objecting to Exhibit 2?

Mr. Ackerson: No, No. 2 is all right.

The Court: Exhibit 2 may be introduced in evidence.

Mr. Ackerson: Exhibit 3 here purports to be a document photostated by Mr. Chambers at Curry Air Transport. Now, the top part of that exhibit is Cal Central's billing to its ticket agency, Skycoach. I do not know whether it has any relation to this bottom part or not. This document is not our document. I do not know what it means. We admit that this top part of it is our billing to Skycoach Agency, but how it got in Curry Air Transport or anything else—I object to it.

The Court: We do not have a jury in this case. The objection is overruled. If it is not material, it will be ignored by the Court.

It may be received and marked Exhibit 3.

The Clerk: Exhibits 2 and 3.

(Testimony of John W. Chambers.)

(The photostats referred to were received in evidence as Government's Exhibits 2 and 3.)

Q. (By Mr. Wright): Now, Mr. Chambers, will you tell us what the two sheets of Exhibit 2 consist of?

A. Yes, sir. It is the passenger manifests of Curry Air Transport Flight No. 311 from La Guardia to Burbank, and sheet No. 2 is passenger manifests for the same flight from Chicago to Burbank. [108]

Q. And can you tell us what the documents contained in Exhibit No. 3 are?

A. Yes, sir. The top of the manifest is the billing of California Central Airlines for five passengers to San Diego addressed to the Skycoach Agency, Lockheed Air Terminal, Burbank, California.

The Court: Will you keep your voice up? I doubt very much whether people at the counsel table can hear you.

The Witness: I am sorry, sir.

Q. (By Mr. Wright): And the rest of that exhibit?

A. The bottom part of the exhibit is the transfer manifest showing the names of the passengers to be transferred to California Central Airlines for continuing transportation to San Diego.

Q. And the names that appear on Exhibit 3 also appear on Exhibit 2? A. Yes, sir, they do.

Q. Let me ask you again, Mr. Chambers, par-

(Testimony of John W. Chambers.)

ticularly with reference to Exhibit 3: From what source did you secure the originals of which that is a photostatic copy?

A. From the offices of Curry Air Transport.

Q. I have forgotten. Did you testify this morning as to whom you talked to at Curry Air Transport?

A. No, sir, I didn't.

Q. Will you tell us now? [109]

A. I talked to Miss Tillie Gamble.

Q. And is she the one who furnished you these documents? A. Yes, sir.

Q. With reference to the handwritten entries that appear on Exhibit 3 on both the upper and lower portions, No. 1728, underneath that 11-4-53; do you know what that represents?

A. Yes, sir. That is the check number of Curry Air Transport in payment for the five passengers billed on the invoice which is pictured here, and the date is the date of the check.

Q. Do you know whether or not there is any company or organization at Lockheed Air Terminal known as Skycoach Agency?

A. No, sir, I don't.

Q. But these documents were in the files of Curry Air Transport? A. Yes, sir.

The Court: May I have those a minute?

The Witness: Yes, sir.

The Court: May I ask this witness a question?

The Witness: Yes, sir.

The Court: Or two. These five passengers originated outside of the state?

(Testimony of John W. Chambers.)

The Witness: Yes, sir, they did. [110]

The Court: And they were carried to Lockheed by whom?

The Witness: By Curry Air Transport.

The Court: And at Lockheed they were carried from Lockheed to San Diego by California Central?

The Witness: Yes, sir.

The Court: And California Central then presented a bill to the Skycoach Agency?

The Witness: Yes, sir.

The Court: You say you don't know of any agency designated as Skycoach?

The Witness: I do of an agency designated Skycoach, yes, sir, but not at the Lockheed Air Terminal.

The Court: But not at Lockheed?

The Witness: No, sir.

The Court: And you found this statement in the offices of Curry?

The Witness: Yes, sir.

The Court: All right.

Q. (By Mr. Wright): Do you know whether or not the name Skycoach appears over the counter at Lockheed Air Terminal?

A. Yes, sir, it does.

Q. And is there any other name that appears at the same counter?

A. Yes, sir, the name of Great Lakes Airlines appears [111] there.

(Testimony of John W. Chambers.)

Q. And do you know whether Curry Air Transport appears at the counter?

A. Not to my recollection, it doesn't; no, sir.

Mr. Wright: May those two photostats be marked as Exhibit No. 4 for identification?

The Court: It may be marked as Exhibit 4.

The Clerk: Four for identification.

(The photostats referred to were marked Government's Exhibit 4 for identification.)

Mr. Wright: And this single sheet as Exhibit 5 for identification?

The Court: Exhibit 5 for identification.

The Clerk: 5 for identification.

(The photostat referred to was marked Government's Exhibit 5 for identification.)

Q. (By Mr. Wright): Mr. Chambers, I show you Plaintiff's Exhibit marked No. 4 for identification, which purports to be a photostatic copy of two documents, and ask you whether or not the photostat was made by you? A. Yes, sir.

Q. And where?

A. At the offices of Curry Air Transport.

Q. And is it a fair and accurate representation of the original? [112] A. Yes, sir, it is.

Q. I show you Plaintiff's Exhibit marked No. 5 for identification and ask you if I asked you the same questions as I did regarding 4 for identification would your answers be the same?

A. They would.

(Testimony of John W. Chambers.)

Mr. Wright: I offer Exhibits 4 and 5 for identification in evidence.

The Court: They may be received in evidence.

The Clerk: Exhibits 4 and 5.

(The photostats referred to were received in evidence as Government's Exhibits 4 and 5.)

Q. (By Mr. Wright): Will you state what Exhibit 4 is?

A. Yes, sir. Exhibit 4, page No. 1, are portions of two passenger manifests of Curry Air Transport's Flights 1611, one from Philadelphia to Burbank and the other from La Guardia to Burbank; and page 2 is a passenger manifest for the same flight from Chicago to Burbank.

Q. And will you state what Exhibit 5 is?

A. The top of Exhibit 5 is an invoice from California Central Airlines addressed to Skycoach Agency, dated November 17, 1953, stating on the face, "To bill you for Burbank-San Diego tickets." And the bottom is the transfer manifest, transferring passengers from the Curry Air Transport flight to the flight of California Central Airlines. [113]

Q. And do the names that appear on the transfer manifest, a part of Exhibit No. 5, also appear on Exhibit No. 4?

A. Yes, sir, they do.

Q. Exhibit No. 5, particularly the upper portion, which is the California Central invoice, was it in the same condition as it appears in that photostat when you took it from the files or when it was handed to you?

A. Yes, sir.

(Testimony of John W. Chambers.)

Q. I make reference to what appears to be a line through Skycoach Agency.

A. That was on there at the time, sir.

Q. At the time you received the documents?

A. Yes, sir.

Mr. Wright: I have no further questions at this time.

The Court: Before you start your cross-examination perhaps we had better take our afternoon recess. We will now recess for fifteen minutes.

(Brief recess.)

Mr. Ackerson: Your Honor, would you prefer that we use the rostrum?

The Court: Well, it is up to you. You will probably be more at ease if you stand or walk around. [114]

Cross-Examination

By Mr. Ackerson:

Q. Mr. Chambers, what was the date you arrived in Los Angeles on this trip?

A. January the 26th.

Q. And you traveled on a United Airlines ticket, I believe?

A. Yes, sir.

Q. And I believe you stated you originated that ticket in Chicago?

A. Well, I had flown from Washington the day before.

Q. Yes, it started in Washington.

Do you have a copy of that ticket with you?

(Testimony of John W. Chambers.)

Now, is this a copy of the ticket that you came on from Washington, D. C.?

A. Yes, sir, it is.

Q. And that is the copy that was in your affidavit, is it not? A. Yes, sir.

Q. Now, Mr. Chambers, can you read what is in this designation space? Is that what you call it?

A. Yes, sir. Well, I don't know whether I can read it or whether it is because I know what it is; but it is from Washington to Chicago to Los Angeles to San Diego.

Q. Now, there is a notation over here "Open." Is that an open ticket? [115]

A. Originally when I left Washington the only part that reserved space was from Washington to Chicago.

Q. And when you left Chicago where did you reserve space on United?

A. From Chicago to Los Angeles.

Q. Then when you got in here with this open designation on the ticket you could have taken this ticket to United, Lockheed, and continued on to San Diego, couldn't you?

A. I came in at International and I could have used that ticket to go to San Diego, yes, sir.

Q. And you could have transferred to another certified line out there, Western, and gone on to San Diego, could you not?

A. Yes, sir, I could have.

Q. And instead of that you walked out of the TWA building—I believe that is where you landed,

(Testimony of John W. Chambers.)

was it not? A. Well, United.

Q. United? A. Yes, sir.

Q. And you walked out of that building to the right, facing the right way, into the California Central Building; is that right?

A. Yes, sir, that's correct.

Q. And when you got into the California Central Building, you bought a separate ticket from California Central [116] to go to San Diego?

A. Yes, sir.

Q. And you paid the regular price of the ticket including the tax? A. Yes, sir.

Q. The same as anyone else?

A. That's correct, yes, sir.

Q. And that is your Exhibit No. 1, I take it? Exhibit No. 1 is that separate ticket and your gate pass from California Central?

A. Yes, sir, correct.

Q. Now, let's refer to these other exhibits for a moment. Government's Exhibit No. 3, it says on this billing to Skycoach? A. Yes, sir.

Q. That was one separate paper, wasn't it?

A. Yes, sir, it was.

Q. And it shows paid 1723, 11-4-53?

A. Yes, sir.

Q. Did you see that check?

A. No, sir, I didn't.

Q. You don't know whether that was a Skycoach check?

A. I was told that it was a Curry Air Transport check.

(Testimony of John W. Chambers.)

Q. But you did not see the check?

A. No, sir. [117]

Q. And you don't know whether the check was to Skycoach, then, do you?

A. No, sir, I don't.

Q. So you didn't mean to imply that Curry or Courier or whatever the name is paid Cal Central for the ticket? You don't know, do you?

A. Well, I was told that the check went to California Central, yes, sir.

Q. But you did not see the check?

A. No, sir, I didn't.

Q. Now, what is this check notation down here?

A. That is the same notation that is on the bill, paid 1723, 11-4-53.

Q. In connection with this, did you see any separate checks for the commission here?

A. No, sir.

Q. Curry's check was less commission, then, wasn't it? A. Yes, sir.

Q. If this was Curry's check?

A. That is correct, yes, sir.

Q. And these were two separate pieces of paper which you found in Curry's file? A. Yes, sir.

Q. And you don't know whether these two pieces of paper amount to nothing more nor less than an accounting [118] between Curry and its ticket agent, Skycoach, do you?

A. I was told that the check was made out to California Central Airlines.

(Testimony of John W. Chambers.)

Q. But you don't know whether or not these documents amount to any more than just what I stated, an accounting record between the ticket agent and Curry? A. Well——

The Court: Well, he doesn't know anything about it except the record itself. The records speak for themselves.

Mr. Ackerson: Well, the records in connection with who paid what to whom is not clear.

The Court: It just says it is paid. It does not say whom it is paid by or whom it is paid to.

Mr. Ackerson: That's right.

Q. (By Mr. Ackerson): You say the name of the ticket agent at Cal Central's name was Kenny? Is that a nickname or a first name or was he introduced as Mr. Kenny?

A. No, sir. When I asked him his name, all he said was "Kenny." Now, I don't know whether that is his first or last name.

Q. With whom were you having this conversation about the weather? With your partner, Oelschlager, or did our ticket agent out there actively converse with you?

A. We actively conversed with the ticket agent, both Kenny and Winslow, both of them. [119]

Q. Both Kenny and Winslow?

A. Yes, sir.

Q. Did you offer your United ticket in exchange for a Cal Central ticket? A. No, sir.

Q. When you came back, how did you come back from San Diego?

(Testimony of John W. Chambers.)

A. We came back on a California Central Airlines flight.

Q. From whom did you get the ticket?

A. From California Central Airlines.

Q. Did you have any conversations down there when you bought that ticket?

A. Well, just the normal conversation you have when you pick up a ticket, yes, sir, questions regarding the next departure time of the flight.

Q. And you bought a ticket from San Diego to Burbank; is that right? A. Yes, sir.

Q. Did you tell the ticket agent you were going on an interstate flight?

A. No, sir, we didn't.

Q. Do you suppose he could have found out if you had not told him?

The Court: Well, that is speculation now. We have not [120] got time to speculate.

Mr. Ackerson: I apologize.

The Court: Let's get the facts.

Mr. Ackerson: I apologize, your Honor.

Q. (By Mr. Ackerson): Now, how many of these documents such as Exhibits 3 and 4, in other words, these billing exhibits, did you examine out at Curry's?

A. Just the ones that are photostated.

Q. Were there others? A. No, sir.

Q. Similar?

A. (Witness shakes head negatively.)

Q. So these are all the documents of this type you found out at Curry's? A. Yes, sir.

(Testimony of John W. Chambers.)

Q. And that accounted for the transfer of five passengers. Well, the record will speak for itself.

Now, Mr. Chambers, you stated, I believe, that you did see a Skycoach ticket office sign out at Lockheed, did you? A. Yes, sir.

Q. And you know, I believe, that they do maintain an office and telephone out there regularly, don't you?

A. There is a number listed in the phone book, yes, sir. I am aware of that. [121]

Q. I think Stanley 7-2626 or something; isn't that right? A. That sounds familiar.

Q. So that there was no implication in your statement that they were inactive or the sign had been left there by mistake or anything of the sort, was there? A. No, sir.

Mr. Ackerson: I think that is all, your Honor.

Redirect Examination

By Mr. Wright:

Q. Mr. Ackerson just asked you about a Skycoach ticket office at Lockheed Air Terminal at Burbank. I think I previously had asked you about a sign, meaning Skycoach. Were you referring in answering his question to an office or to a sign?

A. A sign.

Mr. Wright: That is all.

(Testimony of John W. Chambers.)

Recross-Examination

By Mr. Ackerson:

Q. Where was the sign, Mr. Chambers?

A. It is over a ticket counter to the left of the entrance as you come in the building at Lockheed.

Mr. Ackerson: That is all. [122]

Mr. Wright: I have no further questions of this witness.

The Court: All right. You may step down.

(Witness excused.)

Mr. Wright: I call Robert S. Anis.

ROBERT S. ANIS

called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

The Clerk: Will you take the stand and state your name, please?

The Witness: Robert S. Anis.

The Clerk: Will you spell your last name?

The Witness: A-n-i-s.

The Court: Which case is this now?

Mr. Wright: P.S.A., your Honor, 16754.

(Testimony of Robert S. Anis.)

Direct Examination

By Mr. Wright:

Q. Mr. Anis, were you formerly employed by the defendant, Pacific Southwest Airways?

A. Yes, I was.

Q. And when did your employment with them commence? A. On March 9th, 1953. [123]

The Court: 1953?

The Witness: Yes, sir.

Q. (By Mr. Wright): And in what capacity were you employed?

A. As a ticket agent, Operations Agent.

Q. And where were you stationed?

A. San Diego.

Q. At the ticket counter at Lindbergh Field in San Diego? A. That is correct.

Q. And will you describe what your duties were?

A. Primarily my duties were to sell tickets at the counter, manifest flights, handle certain operation procedures; also get the flights out on the ramp from the various gates at Lindbergh Field. And, of course, to take reservations by telephone.

Q. And for approximately how long were you engaged in these duties for Southwest?

A. I was—I terminated at P.S.A. on April 13th of this year.

Q. You mentioned that you also engaged in handling reservation calls that came in to the counter, is that it? A. Yes, sir.

(Testimony of Robert S. Anis.)

Q. Where would those calls come from?

A. Various ticket agencies, airline agencies, located [124] within the San Diego area.

Q. Did Pacific Southwest have its own ticket office in any other location in that area other than Lindbergh Field?

A. No, sir, it did not.

Q. Are you able to recall what agencies you got calls from regarding reservations or some of them?

A. In general I can name some of them.

Q. Will you name some?

A. I received telephone calls from Skycoach, North American, now defunct Air America, certain agencies known as Airline Reservations, which is the total name I know it by, various travel services in and around San Diego.

Q. Do you know of your own knowledge whether or not these various agencies which we have named were issued Pacific Southwest ticket stock?

A. To the best of my personal knowledge they were.

The Court: Excuse me. Will you read the last question and answer, please?

(The record was read.)

The Court: What do you mean by ticket stock?

Mr. Wright: Tickets of Pacific Southwest Airways.

The Court: You mean were the agents given tickets to pass out over the counter?

(Testimony of Robert S. Anis.)

Mr. Wright: To sell, that's right, your [125] Honor.

The Court: Is that your understanding?

The Witness: That is my understanding of the question.

The Court: All right. Would you keep your voice up a little bit? I didn't get that "ticket stock."

Mr. Wright: All right.

Q. (By Mr. Wright): Then these calls that were received at the counter at the reservations office at Lindbergh Field were for the purpose of confirming space on a Pacific Southwest flight?

A. I would like to clarify your question just a little. You say "confirming space." They were requesting space and at times confirming space that had been previously requested.

The Court: Well, I take it that when somebody wanted a ticket they would go into one of these ticket offices and ask for a ticket and the ticket agent would call you up to see whether or not they could get space upon a certain flight requested?

The Witness: That is correct, sir.

The Court: And if you said yes, then they filled in the ticket and sold the ticket and collected the money?

The Witness: Yes, sir.

The Court: And then the ticket agent remitted the money to you at some time later?

The Witness: The direct accounting between the agency and the airline I have nothing to do [126] with.

(Testimony of Robert S. Anis.)

The Court: All right. But they did sell the ticket and deliver it?

The Witness: Yes, sir.

The Court: And then they had to account to the company for the money which they collected?

The Witness: In whatever manner they collected it.

The Court: Will you keep your voice up? The reporter may have trouble getting it.

Q. (By Mr. Wright): In those cases where space was requested and confirmed did you or other personnel at the Pacific Southwest counter at Lindbergh Field have to make out any tickets for those confirmed reservations?

A. That could work both ways.

Q. I will limit that to these calls that came from these agencies, not from just a member of the public.

A. The limitation wouldn't help my effective answer.

Q. Go ahead and explain it.

A. Primarily because it is quite possible, but rarely so, that an agent may be short of stock, utilizing therefor an exchange order. He might also have a late passenger call and have directed him to come directly to the ticket counter to get the ticket there. Ordinarily and under ordinary routine circumstances the passenger would have the ticket from the agency.

Q. Do you know of your own knowledge

(Testimony of Robert S. Anis.)

whether these [127] agencies also sell tickets on other airlines or also sold tickets on other airlines than Pacific Southwest?

A. Yes, sir, I do know.

Q. Do you know what other tickets than Pacific Southwest they sold?

A. I have been present in an agency office when other tickets were sold on California Center Airlines and various other carriers, too.

Q. Now, when these calls came in from various agencies confirming space, was there any record wherein you confirmed space? Was any record kept in Pacific Southwest's files on the confirmation of that space?

A. Yes, sir. On the reservations cards within the reservation section of our office—of their office there—we had a card for each flight on which was portrayed the picture of the flight from the standpoint of the number of passengers, destination and agency calling in. A small column was utilized for that purpose and we used various codings, initials of agencies and other airlines to designate the ticket seller.

Q. Do you recall what those codings were and what they represented, or some of them?

A. Some of them were the same—identical to the testimony given earlier by Mr. Chambers: SKC for Skycoach, A.A. for Air America, when they were in operation, N.A.A. for [128] North American Airlines, et cetera.

Q. And you say that code would be entered on

(Testimony of Robert S. Anis.)

the reservation card when space was confirmed to that agent? A. Yes, sir.

Q. Did these various agents provide transportation to the airport or to Linbergh Field for the passengers to whom they sold tickets?

A. To the best of my knowledge they did not.

Q. Then passengers just went to the airport in any manner that they saw fit?

A. Yes, sir. I believe in San Diego it is pretty standard.

Q. With their baggage, if they had any?

A. Yes, sir.

Q. And will you describe the check-in procedure at the ticket counter as the passengers checked in for the flight?

A. Yes. A passenger would step to the ticket counter and there is a previously prepared manifest form at the ticket counter and the head of the form designates the flight number and general information of importance to the operations personnel within the airline. The passenger would present his ticket and at the same time we would ask the name of the passenger, check the name and ticket against the reservations card, and if he was a confirmed passenger on that card, enter him on the manifest, check in his baggage. [129] tell him what time and at what gate we were departing, and that would be the complete check-in procedure.

Q. When the passenger checked in at the counter with his baggage, did his baggage contain any kind

(Testimony of Robert S. Anis.)

of a baggage check on it at all before P.S.A. used their baggage checks to identify the baggage?

A. Usually, no. From a particular agency there was occasionally a personal identification which was not designated necessarily as a baggage tag, but it was a personal identification tag which sometimes had been placed on the baggage prior to its arrival at the ticket counter.

Q. Was there, during the check-in procedure any segregation or separation of baggage according to destination?

The Court: Well, now, before you answer that let's find what you mean by "destination." They come in to San Diego, come to Los Angeles. Do you mean Oakland, San Francisco, points East?

Mr. Wright: By "destination" I mean the points to be served by the flight, whether it be Long Beach, Burbank, San Francisco or Oakland.

The Court: Well, if they presented a ticket from San Diego to Los Angeles, why would there be? Well, they might present a ticket from San Diego to Oakland. Assuming that they did present a ticket showing different places in California, was there any attempt to segregate the baggage? [130]

The Witness: I would like to answer that in two parts, if I may. A passenger came to the counter, going from San Diego to Oakland, P.S.A. As any other carrier designated its ticket and baggage checks by color or some form that makes it easy for a fast loading and unloading, consequently it was a very simple task to tag the baggage for its

(Testimony of Robert S. Anis.)

proper destination with a green tag or a yellow tag for Oakland or San Francisco. The segregation as such would be made out at the airplane by the porters and captains handling the baggage, if there was a necessary segregation.

The Court: Let me ask this witness a question. Assuming that a passenger went into a ticket agent in order to buy transportation to New York and the ticket agent said, "Well, now, I can only get you transportation from Los Angeles to New York, but I can get you transportation from here to Los Angeles." So he sells him a ticket, Los Angeles to New York; he also sells him a ticket Lindbergh Field to Los Angeles. And a man comes down and presents the ticket, Lindbergh Field to Los Angeles. Do you have any way of knowing that he is going on to New York from Los Angeles?

The Witness: Yes, sir, under certain conditions I do.

The Court: Would it be one ticket or two tickets?

The Witness: It would be two tickets joined together with a common staple. The ticket, the inter-line form ticket, [131] a book form of ticket sometimes used by some agencies, would have a P.S.A. ticket stapled on the inside of it, and that ticket of course would be removed in flight by the person who picks up the tickets.

The Court: Well, then——

The Witness: I would tag the baggage only to the destination of the P.S.A. flight.

(Testimony of Robert S. Anis.)

The Court: Well, now, would the P.S.A. ticket be attached to the entire ticket? Would it be just one ticket or one book?

The Witness: It would be the one book with a P.S.A. ticket, a separate ticket attached by staple to the inside of the cover of the other ticket.

The Court: All right. When they presented the ticket to you—would they have to present the ticket to you?

The Witness: They would present the whole thing usually.

The Court: They would present the whole thing?

The Witness: Yes, sir.

The Court: And then you would know that the passenger's destination was actually New York?

The Witness: Yes, sir.

Q. (By Mr. Wright): Regardless of whether or not a passenger presented a ticket which was either North America's or Skycoach ticket to New York, coupled with the P.S.A. ticket [132] between San Diego and Los Angeles or Burbank, you checked them in for the flight just the same as any other passenger as long as he had the P.S.A. ticket?

A. Yes, sir, and as long as we had a confirmed reservation.

Q. And the P.S.A. ticket would show the fare on its face, would it not?

A. Yes, all tickets show fare on the face.

The Court: Just a minute. You mean the P.S.A.

(Testimony of Robert S. Anis.)

ticket would show the fare from San Diego to Los Angeles?

The Witness: Yes, sir, only for the P.S.A. portion.

The Court: Only for that portion of it?

The Witness: (Nods head affirmatively.)

Q. (By Mr. Wright): And the other ticket, if the passenger had another ticket, to New York or Chicago would also show the fare from San Diego, that carrier's fare, from San Diego to New York or Chicago, would it not?

A. It would show a fare, which was the fare paid by the passenger at the agency in San Diego.

Q. When you say the fare paid by the passenger, you mean the total fare paid by the passenger for the two tickets would be the amount entered in the transcontinental ticket?

A. That would seem to be the apparent total, but I would have to refresh my knowledge on that particular item.

Q. Did you work for this airline ticket agency at one time? [133] A. No, sir.

Q. Now, did these ticket agents sometimes issue their own exchange orders rather than Southwest tickets?

A. I would like to clarify that. I have seen exchange orders and handled many exchange orders. Would you repeat the question, please?

(Question read.)

(Testimony of Robert S. Anis.)

Q. (By Mr. Wright): I will withdraw that question and ask you: What is an exchange order?

A. To the best of my knowledge an exchange order is a form utilized between the airline and the selling agency to facilitate the handling of a passenger when ticket stock is short; also to achieve an immediate payment of commission at the time of sale of the ticket, and at that time the passenger would pay what amounts to a down payment to the agent selling the ticket. The agent would enter the amount he had received in one column of the exchange order, the balance due in another column, the ticketing agent at the field would then issue a ticket and collect the balance due on the exchange order at the San Diego counter or whatever counter was involved.

Q. Now, I show you Plaintiff's Exhibit No. 2 and with particular reference to the lower portion thereof there is an exchange order. Were those exchange orders in use at all at the Lindbergh Field ticket office of Pacific Southwest [134] Airways?

A. Yes, sir, an exchange order of this type was in use.

Q. And were they used in the manner in which you have just testified or for some other purpose?

A. No, sir, they were used in the manner which I have just testified to. I would like to amplify that, incidentally, if I may.

Q. You may.

A. At a later date a slightly different form carrying slightly less information on the face of the ex-

(Testimony of Robert S. Anis.)

change order was utilized, and other than that it was the same.

Q. Can you point out what the difference is, if you can recall?

A. It is a little difficult now offhand to recall, but there was some slight change in the makeup of the face of the exchange order itself.

The Court: Is there such a thing as an exchange order between airplane lines? Can one airplane line give an order to another for a ticket?

The Witness: It is my understanding—is the question addressed to me?

The Court: Yes.

The Witness: It is my understanding that on the basis of an interline agreement that they can do that. What the [135] exchange order usage was—what use was made of exchange orders in large accounting procedures between the airlines with which I was employed and others, I have no knowledge.

The Court: Well, when you talk about exchange orders you are really referring to an order given by the agent upon the line for the sale of the ticket?

The Witness: That's correct.

The Court: The sale has been made, the agency has collected part of it, the person goes in and presents his order and picks up the ticket and pays the balance?

The Witness: Yes, sir.

The Court: And that is what you refer to as an exchange order?

The Witness: Yes, sir. There are specific excep-

(Testimony of Robert S. Anis.)

tions to it, such as the possibility of an agent being out of stock and he will issue an exchange order in lieu of a ticket and collect the full amount.

The Court: I see.

The Witness: And return it on some later billing by a previous arrangement with the company.

Q. (By Mr. Wright): Now, did there ever come in your experience working at the ticket counter at Lindbergh Field for Pacific Southwest a time when a flight was oversold?

A. You mean at San Diego?

Q. That's right. [136]

A. Yes, sir, we have had occasion to have flights oversold, overbooked.

Q. Overbooked?

A. That would be the designation.

Q. And what do you mean by overbooked or oversold?

A. Through possibly a lack of liaison between persons on duty on a particular shift it was possible to overbook, book more passengers than the plane could legally carry, that would constitute overbooking.

Q. And that did occur during the time you were working at the ticket counter?

A. Yes, sir, there have been occasions of that nature.

Q. Were you alone at the counter or did you have other agents with you?

A. There were usually other agents working

(Testimony of Robert S. Anis.)

the same shift and we rotated the counter as seemed feasible to handle the people coming in.

Q. And these instances where you were over-booked, how did you handle the situation?

A. If everybody showed up we protected space on other carriers. I don't know if that makes complete sense, but we would go on a first-come, first-served basis for the most part. I would say, first-come, first-served based on the reservations that were there, and then call other carriers who had flights as close to our flight time as possible, and [137] if they had space we would protect the passenger on that carrier. We would refund the passenger's ticket if we could not carry him and send him over to the other counter down in the Terminal.

Q. Was there any criteria? Or how did you determine who would be refunded and who would be checked in and given space on your ship?

A. In general naturally P.S.A. was in business like any other business to make a dollar. In general we tried to protect all of our through passengers, and by through passengers, I mean passengers from San Diego to San Francisco and Oakland. However, a fair sized percentage of passengers on certain flights were passengers going only on P.S.A. as far as Burbank. We would attempt to protect those who were meeting other flights out of Burbank if we possibly could. If protecting space out of San Diego could be obtained but could not protect the passenger further

(Testimony of Robert S. Anis.)

on, we would try to do some switching even if it involved discussing it with all passengers involved at the counter.

Q. Now, you referred to passengers for connecting flights. What kind of passengers would they be?

A. As I mentioned in my earlier testimony, agency passengers would come in with a ticket form and another P.S.A. ticket form stapled to the inside of it. It was obvious that they were going on to some other destination other than [138] the Los Angeles area. We did our best to protect those people, to get them up to Burbank in time to catch the other flights.

Q. On your flight? A. Yes, sir.

Q. Had you received any instructions from any superior in Pacific Southwest regarding the policy on who should be refunded and who should be kept on Pacific Southwest flights in the event of an overbooking?

A. Well, yes and no, in that when I joined the company I was informed it was general custom. Later I was advised by the local station manager that in spite of the fact that—You see, there was—and I can only speak of the time during which I was employed by the organization—a statement on the face of the ticket which is common to most tickets and most carriers to the effect that the airline reserves a half hour, or it might be some other period of time, right of reservation, the right to resell that space if a passenger does not show

(Testimony of Robert S. Anis.)

up in time to check in. The exercising of that right was left to the agent's discretion. For the most part it was general practice, as I was advised shortly after I was employed, to protect the passengers connecting out of the Burbank area.

Q. Now, when you use the term "protect" there, do you mean keep them on a Pacific Southwest flight or protect them [139] on some other carrier?

A. No, keep them on Pacific Southwest Airlines flight.

Q. When you testified regarding connecting flights at Burbank, just what did you mean? Do you mean connecting flights that were going to continue only within the state of California or flights going outside the state of California?

A. I would like to preface my answer to that by saying that "connecting" is perhaps a misnomer in that there was no specific connection as such; but passengers held tickets on other flights out of Burbank eastbound to, oh, anywhere from Dallas to Kansas City, Chicago to New York.

Q. And both of those tickets were presented at the time that they checked into the flight?

A. In many, many instances, yes.

Q. Now, do you have any knowledge—I don't know whether I asked you this or not — as to whether or not these passengers holding these two tickets paid the agents from whom they bought them the total of the fare which appears on the face on the Pacific Southwest Airways tickets plus

(Testimony of Robert S. Anis.)

the total of the fare which appeared on the transcontinental ticket? Or do they just pay the total amount that appears on the trancontinental ticket?

A. I cannot answer that because the passenger would present me a ticket. I would have to assume, and it would be only an assumption, that he had paid for it to get possession [140] of it inasmuch as it is the practice to accept full payment before issuing the ticket.

Mr. Wright: I have no further questions.

Cross-Examination

By Mr. Gardiner:

Q. Mr. Anis, you testified that while you were employed by Pacific Southwest at the Lindbergh Terminal that you received many calls for reservations or to confirm previous reservations from travel agencies. Did you also receive calls from individuals who would call up and ask for a reservation? A. Oh, yes, sir, yes, sir.

Q. And would you receive counter calls, persons who came into the airport requesting reservations? A. Oh, yes.

Q. Which category would you say constituted the larger number of sales of tickets, the individual persons or travel agencies?

A. I would make a very rough estimate from this position of a 65-35 breakdown, with the 35 being the agency side of the picture.

(Testimony of Robert S. Anis.)

Q. The majority, then, were from individuals. When individuals would come in did they ever present what is known as an open space ticket on Western Airlines or United [141] Airlines showing passage from San Diego to either Burbank or Long Beach or San Francisco?

A. Would you repeat that, please, sir?

Q. Yes. I will rephrase it slightly. When you were on counter duty did you ever experience an individual coming in and requesting passage to another city in California which you served and ask if he could pay for such space with an open space reservation or ticket of United Airlines or Western Airlines?

A. I have had a rare occasion of that sort, yes.

Q. And what would your reply be to such a request?

A. He would have to refund his ticket he had on Western Airlines at the Western Airlines ticket counter and purchase a ticket from Pacific Southwest.

Q. In other words, Pacific Southwest would not accept a ticket of Western Airlines or United Airlines for transportation on P.S.A.?

A. No, sir. The direct answer is no.

Q. Would Pacific Southwest accept the tickets of any other air carrier for travel in California?

Mr. Wright: If he knows.

Q. (By Mr. Gardiner): If you know.

A. I would have to answer that to the best of my knowledge on a ticket-selling basis, no, sir.

(Testimony of Robert S. Anis.)

Q. The passenger's name does not appear on a Pacific [142] Southwest Airline ticket, does it?

A. No, sir, it does not.

Q. And the ticket stock to which reference has been made is a different type of ticket stock than that customarily used by either the major trunk line carriers or the agencies?

A. That is true. P.S.A. uses a coupon-type ticket, as compared to the usual standard interline form used by trunk line carriers.

Q. And that ticket—I will introduce copies of those later, your Honor—that ticket has printed on it the destination and the price of the fare?

A. Yes, sir, and the tax.

Q. When passengers who had procured tickets from a ticket agency presented to you an interline form ticket and simultaneously presented a P.S.A. ticket, did the interline form ticket possess any particular significance to you as a P.S.A. employee?

A. Yes, sir, it did, in a minor way, inasmuch as it was necessary to present the interline ticket, inasmuch as the P.S.A. ticket was stapled to the inside of the front cover. Now, on our manifest form, on the very left-hand side of the manifest as you look at it, you would designate the final agent handling the ticket and you could designate it very properly by observing the total form handed you, so there could be no mistake. [143]

Q. It facilitated identification of the agent who sold the P.S.A. ticket?

A. Yes, sir.

(Testimony of Robert S. Anis.)

Q. But your first knowledge that such a passenger possessing an interline form ticket was going to go on an interstate journey occurred when he showed it at the P.S.A. counter; is that correct?

A. In many instances, and I would say the majority of instances, yes. There would be an occasional late call from an agency asking if we could possibly get space because they had to meet such and such a flight and they had somebody at their counter and so on, things of that nature.

Q. That was the rare exception, was it not?

A. As compared to the other procedures, yes.

Q. When a person having in his possession an interline ticket which indicated that he was apparently going to go to Chicago, Kansas City or New York, would you, in placing a P.S.A. baggage check or any baggage check on it, check it to such final destination?

A. No, to the final P.S.A. destination only.

Q. And no further? A. And no further.

Q. Mr. Anis, counsel for the Civil Aeronautics Board exhibited to you Plaintiff's Exhibit 2 in this action. Do you still have that before you? [144]

A. No, sir, I do not.

(The Clerk handed the document referred to to the witness.)

The Witness: Thank you.

Mr. Gardiner: Thank you.

Q. (By Mr. Gardiner): I direct your atten-

(Testimony of Robert S. Anis.)

tion to the exchange order portion of that Exhibit 2 and particularly to the rectangular block or blocks on the left-hand side. Would you explain the meaning that the initials in those blocks possess to you as a——

A. You are speaking of SKC over Agent's Validation?

Q. Yes. A. Skycoach.

Q. And Skycoach is what? Is Skycoach an agency, if you know?

A. It is to my knowledge a ticket agency. It is also more than a ticket agency to my knowledge.

Q. And would you maintain on this manifest sheet the initials of the company whose initials appear in that Agent's Validation box?

A. Would you ask me that again, please?

Q. You mentioned a few moments ago that on your manifest sheet you placed a list—I think you called it the final agent or the agent who would be given credit for that——

A. That is the agency by initials, such as Skycoach, [145] not an individual.

Q. Yes. Is it your understanding that the commission for the sale of the Pacific Southwest tickets represented by this exchange order would be paid to the Skycoach agency?

A. On the basis of the presentation in this exhibit, yes, sir. I might add, if I may, that I have no knowledge of the meaning of the figures in the upper right-hand corner of that exhibit, on the exchange order.

(Testimony of Robert S. Anis.)

Q. You have reference to the——

A. 5951-529, and the figures at an angle beneath it. I have no knowledge of the meaning of those figures.

Q. You mentioned a minute ago that upon occasion a flight would be overbooked. How frequently would that occur in your experience?

A. It varied with the traffic itself, of course. There was a period of time when it was an almost nightly occurrence. That was for a short period of time, and then of course on heavy week ends it would come up again.

Q. Upon such occasions when you called other carriers to protect some of the overbooked passengers, you were doing that as a courtesy to those passengers for whom you did not have space; correct?

A. That is correct, yes, sir.

Q. Do you recall which of the other carriers those overbooked passengers ultimately procured passage on to another point in the state? [146]

A. Within the state? Yes, sir. For a period of time when our schedule was stable, California Central Airlines had a flight leaving shortly after our schedule and later they changed. It was leaving shortly before our late schedule and we invariably would try of course to protect our particular flight because it was the closest to the P.S.A. schedule and gave us a chance to talk to the passengers at a time when we could still help them.

Mr. Gardiner: No further questions.

(Testimony of Tillie Gamble.)

Mr. Wright: Her testimony is going to be general and very short, your Honor. It will probably affect both.

The Court: All right.

Mr. Keatinge: If your Honor please, I wonder if at this time I could note my appearance for the witness Tillie Gamble. Richard H. Keatinge, Keatinge, Arnold & Zack.

The Court: Your appearance may be [151] noted.

Direct Examination

By Mr. Wright:

Q. Miss Gamble, are you employed at Lockheed Air Terminal at Burbank? A. That's right.

Q. By whom are you employed?

A. Currey Air Transport.

Q. That is a large irregular carrier?

A. That's right.

Q. Are you also employed by Great Lakes?

A. I am

Q. And that is a large irregular carrier?

A. Yes, sir.

Q. Will you tell us just what your duties are at Lockheed Air Terminal in connection with these two carriers, briefly?

A. I am assistant to the chief pilot, I do the crew scheduling, flight scheduling, keep all the flight records.

The Court: Of what?

(Testimony of Tillie Gamble.)

The Witness: Of both Currey Air Transport and Great Lakes Airlines.

The Court: Both of them?

The Witness: Yes, sir.

Q. (By Mr. Wright): During 1953 both Currey Air Transport and Great Lakes Airlines were operating DC-4 aircraft, were [152] they not?

A. Yes, sir.

Q. Will you state what points they were serving in the United States, to be best of your recollection?

A. Various points. They served Oakland; Kansas City, Missouri; Chicago, Illinois; Philadelphia, Pennsylvania; New York; Newark; and various other points, dependent upon where they were required to operate.

Q. Do you have any connection at all with the dispatching of flights?

A. Only with the alerting of crews.

Q. Do you know whether or not Currey and Great Lakes on their eastbound flights—withdraw that.

The eastbound flights of both Currey and Great Lakes originate at Burbank, do they not, as far as the DC-4 aircraft are concerned?

A. Not always.

Q. Sometimes in Oakland? A. Yes, sir.

Q. Do you know from your own personal knowledge whether or not those carriers also transport persons who come up from San Diego to Burbank?

(Testimony of Tillie Gamble.)

The Court: I think you had better elucidate. They may come up by automobile, they may come up by train. What do you mean? They may come up by boat, or they may even walk. What [153] do you mean?

Mr. Wright: That was preliminary, your Honor. I was going to come to that.

The Court: It is immaterial. Supposing they walk up from San Diego, what difference would it make as far as this case is concerned?

Mr. Wright: I will withdraw that.

Q. (By Mr. Wright): Miss Gamble, do you know of your own knowledge whether Currey and Great Lakes on their eastbound flights originating in Burbank carry persons who are transported to Burbank from San Diego by California Central and Pacific Southwest?

A. Well, I can't answer that question. The only way I can answer that question is to say that passengers, I know, are supplied us from different agents all over the country. How they arrive here I can't tell you.

Q. And do you know whether or not westbound passengers arriving in Burbank on the flights of Currey and Great Lakes are transferred to California Central or Pacific Southwest?

A. Passengers arriving are at times transported by both of those carriers, also by United Airlines, by Western Airlines.

Q. It is practically a regular occurrence with each flight? A. No. [154]

(Testimony of Tillie Gamble.)

The Court: May I ask this witness a question?

Mr. Wright: Certainly, your Honor.

The Court: Assuming that a passenger comes in from the East, New York, Philadelphia, or Chicago, on a Currey plane, and they are going to San Diego, do you have anything to do with arranging transportation to San Diego, what plane they go on and when they go?

The Witness: No, sir.

Q. (By Mr. Wright): Miss Gamble, are you familiar with the manifest used by Currey Air Transport? A. Yes, sir.

Q. I show you Plaintiff's Exhibit No. 15 in 16,754-HW, and ask you whether or not that is a photostat of a manifest of Currey Air Transport.

A. Yes, sir, it is.

Q. Referring to page 3 of this Exhibit 15, Miss Gamble, at the bottom of the page there is an Exchange Order; are you familiar with that particular document?

A. No, I am not. I have nothing to do with those at all.

Q. You have nothing to do with making out a transfer manifest?

A. No; and I have nothing to do with tickets, either.

Mr. Wright: That is all. No further questions.

The Court: Any cross-examination? [155]

Mr. Gardiner: Do you wish to proceed in the same order as yesterday?

(Testimony of Tillie Gamble.)

The Court: Yes. As this is a general witness, I guess you can proceed first and then Central Airlines second.

Mr. Ackerson: I have no questions.

Cross-Examination

By Mr. Gardiner:

Q. Miss Gamble, does Currey Air Transport currently operate any flights from Burbank to San Diego?

A. No, sir, not very often. Once in a while.

Q. Do they operate any flights from Burbank to Oakland?

A. Yes, sir.

Q. Is that a daily flight?

A. Yes, sir. Well—well, I can't say that it is a daily flight, sir. If we have passengers we carry them up.

Q. The two carriers for whom you work obtain passengers in many instances, do they not, from a ticket agency known as Skycoach?

A. Yes, sir.

Q. Do you know if Skycoach furnishes transportation from Burbank to Oakland for incoming passengers from the East?

A. I presume they do—they—

The Court: Let's not presume. If you know, say so; if you don't know, just don't answer the question. Let's not [156] presume.

The Witness: I can't say, sir.

(Testimony of Tillie Gamble.)

Mr. Gardiner: I believe that is all, your Honor.

The Court: May this witness be excused?

Mr. Wright: I have no further questions, your Honor.

The Court: You may be excused.

Mr. Wright: Call Mr. Fritz Hutcheson.

FRITZ HUTCHESON

called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

The Clerk: State your name, please.

The Witness: Fritz Hutcheson.

The Clerk: Spell your name, please.

The Witness: F-r-i-t-z H-u-t-c-h-e-s-o-n.

Direct Examination

By Mr. Wright:

Q. Mr. Hutcheson, are you connected with U. S. Aircoach? A. Not at the present time.

Q. During 1953 were you? A. Yes, sir.

Q. And in what capacity?

A. President. [157]

Q. And will you state what U. S. Aircoach is?

A. U. S. Aircoach is a large irregular air carrier operating under Part 42 of the Civil Aeronautics Board, I believe.

The Court: Will you keep your voice up, please? Counsel has to hear you. Mr. Wright, you also are speaking rather low.

(The answer was read by the reporter.)

(Testimony of Fritz Hutcheson.)

Q. (By Mr. Wright): During 1953 did U. S. Aircoach have space at the Lockheed Air Terminal at Burbank? A. Yes, sir.

Q. A ticket counter and an office?

A. Ticket counter didn't belong to U. S. Aircoach; it belonged to an agency.

Q. But the ticket counter was used by U. S. Aircoach?

A. Used by U. S. Aircoach to dispatch flights, yes, sir.

The Court: Just a minute. The counter was owned by an agency?

The Witness: It was operated by an agency.

The Court: Which agency? What do you mean, ticket agency?

The Witness: Ticket agency.

The Court: Which agency?

The Witness: Metropolitan Travel Service. It was operated by three different agencies during the period of 1953, sir. [158]

The Court: You only used the counter for the purpose of dispatching?

The Witness: Dispatching flights.

Q. (By Mr. Wright): And will you tell us between what points during 1953 U. S. Aircoach was operating?

A. To the best of my knowledge they operated to Dallas, Oakland, Oklahoma City, Kansas City, Chicago, Pittsburgh, Philadelphia, New York City, Miami; and then practically every other city in the

(Testimony of Fritz Hutcheson.)

United States on military Commercial Air Movement, that is C.A.M., CAM movements.

Q. Outside of the CAM movements, U. S. Aircoach operated both east and westbound flights?

A. East and westbound flights, that's right, sir.

Q. Did your flights originate and terminate at Burbank? A. Not all of them, no, sir.

Q. Referring now to just those flights which were operating transcontinentally, east and west.

A. I believe some of them started in Oakland, and some of them in Burbank.

Q. You were operating what type aircraft?

A. We operated in 1953 DC-4s, C-46s, and DC-3s.

Q. In the Southern California area how many ticket offices were operated by U. S. Aircoach?

A. None, sir.

Q. How did U. S. Aircoach secure its [159] passengers?

A. From various ticket agencies, independent ticket agencies.

Q. And did you put out your ticket stock, issue your ticket stock to these various agencies?

A. Not U. S. Aircoach tickets, no, sir. They operated strictly on exchange orders.

Q. Did U. S. Aircoach on flights originating at Burbank, westbound flights originating at Burbank, secure any passengers from Friedkin Aeronautics, doing business as Pacific Southwest Airlines?

A. If we operated westbound we would have been out over the ocean, sir.

Q. Eastbound.

(Testimony of Fritz Hutcheson.)

A. Would you repeat the question, please?

Q. On eastbound flights originating at Burbank, did U. S. Aircoach receive passengers from Friedkin Aeronautics or Pacific Southwest Airlines?

Mr. Ackerson: I object to that question on the ground it is calling for a conclusion that is almost legal in form. I don't mind him asking the witness how he got his passengers, if any. But he is asking a question, did U. S. Aircoach get passengers from Freidkin?

I assume that he is going to ask the same question from my client. He stated he got it from the ticket office.

The Court: Friedkin hasn't objected. [160]

Mr. Gardiner: We will adopt those objections, your Honor. I am anxious to expedite this hearing, and I don't want to make too many technical objections. But I agree with that objection.

The Court: Perhaps you had better reframe your question.

Mr. Wright: I will withdraw the question.

The Witness: I couldn't answer it anyway.

Q. (By Mr. Wright): Mr. Hutcheson, I show you Plaintiff's Exhibit No. 21, which consists of two pages, and ask you whether or not the first page thereof is a U. S. Aircoach manifest.

A. That is a U. S. Aircoach manifest, yes, sir.

Q. And with reference to the handwritten portion in the body, was that made by one of your employees?

(Testimony of Fritz Hutcheson.)

A. That wasn't made by a U. S. Aircoach employee, no, sir.

Q. Do you know who it would have been made by?

A. It was made by one of the agencies. It looks like—I don't recall exactly who W.C.W. is, but it would be one of the agency employees.

Q. Wouldn't that be W. C. Wingate?

A. That would be Wingate, yes.

Q. Who is he employed by?

A. He was employed by, I believe, American Air Bus.

The Court: American what?

The Witness: Air Bus. That was an agency. I believe they [161] changed their name to—I don't recall right now, but I know they changed their name. The name originally was American Air Bus, and American Airlines objected, and they changed their name to Continental Air Bus, or something like that.

Q. (By Mr. Wright): Can you by reading this handwritten material on the first page of Exhibit 21 tell us what it means?

A. It says, "Off 60 V Flight 108 W. Out PSA Flight No. 90 at 11:30 A.M. BUR/SAN WCW."

Q. Does 60 V stand for partial NC designation of aircraft?

The Court: I am sorry, but I am going to ask both counsel and the witness to speak up. I am sitting right here by you, and I am satisfied that counsel cannot hear you, and even the reporter can't

(Testimony of Fritz Hutcheson.)

be hearing you. I think possibly you ought to speak a little louder.

Now, let's start all over again.

The Witness: That is the NC number of one of our C46 aircraft.

Q. (By Mr. Wright): Does the FLT 108W represent a flight number?

A. That apparently represents a flight number of U. S. Aircoach's incoming flight from the East.

Q. With reference to the next notation on the front page of Exhibit 21, which appears to refer to PSA Flight 90, can you tell us what that [162] means?

A. Sir, I didn't write it. I assume it means what it says. It says, Out PSA Flight 90.

Q. In layman's language what would that mean?

A. Just exactly what it says, Out PSA Flight 90.

Q. Do you mean that those passengers were put on board a PSA flight?

A. I couldn't say that they were, but that is what the manifest says.

The Court: PSA, what is that?

The Witness: Pacific Southwest.

Q. (By Mr. Wright): Referring to page 2 of Exhibit 21, which contains an exchange order, are you familiar with that particular type of exchange order, or were you during the operation of U. S. Aircoach? A. I don't believe I was, sir.

Q. You didn't handle any of the paper work?

A. I didn't handle any of the paper work at all. That wasn't my job.

(Testimony of Fritz Hutcheson.)

Q. Have you ever seen this type of exchange order?

A. I have seen Pacific Southwest exchange orders. I have seen every airline's exchange order.

Q. Well, that exchange order, does it not represent an order for the transportation of four passengers from Burbank to San Diego?

A. Would you rephrase that question, [163] please?

Q. Does the exchange order, which is on page 2 of Plaintiff's Exhibit No. 21—I will change that. Was that issued to provide transportation for four passengers between Burbank and San Diego?

A. You are asking me a question that I can't answer. I mean, I didn't handle the paper work.

Q. You don't know whether any of the passengers that came on that particular flight were transported further on Pacific Southwest?

A. I wouldn't have the slightest idea whether they were or not. I never handled such things.

Q. You are the president——

A. Of U. S. Aircoach, that's right.

Q. Do you know whether or not incoming passengers from westbound flights operated by U. S. Aircoach were transferred to Pacific Southwest Airways?

A. It is my understanding they were transferred on the first airline that there was space available, whether it was Pacific Southwest or California Central or Western Airlines, United Airlines, whatever they could find space on, the first flight avail-

(Testimony of Fritz Hutcheson.)

able, why, they put them on. That was the general procedure that I know about.

Q. In that case the onward transportation was paid by U. S. Aircoach, was it not?

Mr. Gardiner: I object to that question as leading and—— [164]

The Court: You are assuming something, because supposing the destination was Los Angeles, why would U. S. Aircoach pay onward transportation to Seattle or to Portland or to Oakland or to San Diego?

Now, may I ask this witness a question?

Mr. Wright: You may, your Honor.

The Court: Tickets on your line usually sold, if it came to Los Angeles, destination Los Angeles?

The Witness: Yes, Burbank.

The Court: Did you sell any tickets destination San Diego?

The Witness: The agency in the East sold San Diego and Oakland.

The Court: When a passenger came with a ticket sold by an agent that called for San Diego, and they disembarked here in Los Angeles, what did you do with them?

The Witness: We terminated the flight in Burbank. The agency handling the passengers were supposed to off-space them on whatever carrier they could get space to get them the fastest transportation. They were put on bus, they have been put on trains, some of them go by private automobile.

The Court: Do I understand this—is this a fair

(Testimony of Fritz Hutcheson.)

statement—that when you brought in passengers from the East that were to go to San Diego, that you turned them over to an agency? [165]

The Witness: No; the agency handled our flights, in other words, U. S. Aircoach didn't handle the flights directly, the agency employees handled our flights as they came in and took care of off-spacing the passengers, just like any ticket counter would. It is handled by an agency.

The Court: All right. Supposing an agency had sold a ticket to San Diego, and the passenger came in here to Burbank and disembarked, what did you do with that passenger?

The Witness: They would make arrangements.

The Court: The agency?

The Witness: Yes, to put those passengers on the first available flight that they could get to San Diego, the fastest form of transportation. If they were going to Camp Pendleton and were destined for San Diego, the boys would sometimes request that they take the Santa Fe bus, because they get there faster, rather than go to San Diego and back. So we would give them bus fare.

The Court: Did you have anything to do with the arranging of this transportation?

The Witness: I didn't have anything to do with the arranging of it.

The Court: Did your company have anything to do with it?

The Witness: Only by instructions to the agencies. As far as I know I don't think the company

(Testimony of Fritz Hutcheson.)

itself. U. S. Aircoach operated a little differently than most of them. [166] U. S. Aircoach, all their handling of their flights, and so forth, was generally done by an agency, it wasn't done by the company itself, under contract. The agency got an override on all passengers, they got a five per cent override, that is why they handled all their flights for them under contract, and U. S. Aircoach themselves usually didn't handle them themselves. We separated the two.

The Court: When the passenger disembarked here at Burbank, did you feel your responsibility was over?

The Witness: No. It was up to the agency under this contract to take and see that those passengers got the fastest form of transportation and the first available form of transportation to their destination with the least amount of delay. Whichever space was available that is the one that they had instructions to put them on. In other words, it would make no difference who it was, whoever they could get the fastest form of transportation from.

The Court: Suppose a passenger disembarked at Burbank, going to San Diego, and they were put upon a Southwest plane, who paid for the plane passage?

The Witness: That is the one thing I can't—I don't recall, whether the company reimbursed them for it, or whether the agency paid it and then it was reimbursed by the company. Eventually the oper-

(Testimony of Fritz Hutcheson.)

ating carrier would reimburse. But whether they actually paid—who they paid, whether they paid the [167] agency for it, I don't remember. I believe it was different at times, because we changed operations two or three times during the year. We went from one general agent to another. In other words, for a while we were operating—Safeway Air Coach was handling all our flights, and then American Air Bus, and then they changed the name to another one. I just don't recall exactly who paid for the passengers, whether we paid the different carriers direct or whether it was paid for by the agency, and then they billed the carrier for it. That I couldn't answer. I couldn't be exact on it. I wasn't familiar enough with the accounting procedures on that.

Mr. Wright: May this be marked for identification as Plaintiff's Exhibit No.—

The Court: It will be 23.

The Clerk: Plaintiff's Exhibit 23 for identification. That is in '754?

Mr. Wright: Yes.

(The document referred to was marked Plaintiff's Exhibit 23, for identification in case No. 16754.)

Q. (By Mr. Wright): Mr. Hutcheson, do you know Mr. Joe Stout that works for our office?

A. Yes, sir.

Q. Do you recall an occasion in October of 1953

(Testimony of Fritz Hutcheson.)

when Mr. Stout came to your office at Lockheed Air Terminal? [168]

A. Mr. Stout came to our office quite often, sir. I don't remember any specific instance.

Q. You have no recollection whatsoever of Mr. Stout coming to your office in October of 1953 and requesting permission to examine some of your records, manifests?

A. Mr. Stout was instructed any time he came to our office that our office was wide open, he could go into our records at any time, go through our records at his leisure and do whatever he wanted with them. I don't remember any specific instance.

Q. Mr. Hutcheson, I show you Plaintiff's Exhibit No. 23 for identification.

The Court: Have you shown that to opposing counsel?

Mr. Wright: No. I beg your pardon.

The Court: Don't try to use it until counsel has a chance to look at it.

Q. (By Mr. Wright): I show you Plaintiff's Exhibit No. 23 for identification, Mr. Hutcheson. It purports to be a photostatic copy of a document, and I ask you whether or not you are familiar with that particular form.

A. I am not familiar with it, no, sir. It is the first time I have seen one of these forms.

Q. The name of your company is mentioned. is it not?

A. It has been written in at the top, U. S. Air-coach.

(Testimony of Fritz Hutcheson.)

Mr. Wright: I request that this document be marked for [168-A] identification as Plaintiff's Exhibit No. 24 for identification.

The Court: 24 for identification.

Mr. Wright: Consisting of two pages.

The Clerk: 24 for identification.

(The document referred to was marked Plaintiff's Exhibit 24, for identification, in case No. 16754-HW.)

Q. (By Mr. Wright): Now, Mr. Hutcheson, I show you Plaintiff's Exhibit marked No. 24 for identification, consisting of two sheets, purporting to be photostatic copies of various documents, and I ask you to examine it. Have you examined both pages of the exhibit, Mr. Hutcheson?

A. Yes, sir.

Q. Are you able to tell us whether or not those are photostatic copies of manifests and tickets of U. S. Aircoach?

A. They appear to be. Manifests and ticket stocks, both, original flight coupons, it looks like.

Q. Now, with reference to the two tickets that appear on the first page, can you tell from the validation stamp where that ticket was sold, or those tickets?

A. Not from the validation stamp. I can tell from the issued exchange order where they were sold, where it says, "Issued in exchange for." It apparently was sold by [169] Skycoach in Philadelphia on their original exchange order.

(Testimony of Fritz Hutcheson.)

Q. And your ticket calls for transportation from Philadelphia to San Diego, does it not?

A. That's right, sir.

Q. And the ticket——

Mr. Gardiner: Do we have the answer to that last question?

The Court: Read the question and the answer.

(The question and answer were read by the reporter.)

Q. (By Mr. Wright): And you were referring in your answer to the ticket marked B-19524, were you not, Mr. Hutcheson?

A. B-19524 and B-19523.

Q. Those particular coupons are flight coupons, are they not, that are picked up by the carrier or ticket agent at the time the passenger boards the——

A. Not these two particular ones, no.

Q. Which are these?

A. These are the ones that are made out in our accounting office after the flight is terminated and we make out the U. S. Air flight coupons. The ones that were picked up would be the Skycoach of Philadelphia exchange orders.

Q. In other words, the passengers who held those two coupons were flown from Philadelphia to Burbank by U. S. Aircoach on an exchange order of Skycoach? [170]

Mr. Gardiner: I object to that question as assuming something not in evidence. The witness has testified that these were made up after the flight.

(Testimony of Fritz Hutcheson.)

Counsel's question referred to these coupons being held by the passenger.

The Court: Sustained.

I don't think, when a document has been marked for identification, that you have any right to go into the document except for the purpose of laying the foundation for it to be admitted into evidence. And then when you get it into evidence you can examine as to the document. But until you get it in evidence I don't think you can examine on the document.

Q. (By Mr. Wright): Mr. Hutcheson, referring again to Mr. Stout, do you have any recollection at all of last October him making photostatic copies of some of your records?

A. As I previously stated, Mr. Stout was free to come into our office any time and make photostatic copies of all of our records. I don't recall any particular time, because they were in our office quite often.

Q. Have you seen him make copies in your office?

A. I didn't see him make the copies, but they asked me if they could take records with them and make copies, and I told them, "Do that, and bring the machine in and make them up." But I never saw them actually make copies.

Q. Do the two sheets constituting Plaintiff's Exhibit [171] No. 24, for identification—do they constitute photostatic copies of records of U. S. Aircoach?

A. They look as such, yes.

(Testimony of Fritz Hutcheson.)

Q. You are not sure?

A. They look exactly like U. S. Aircoach records. I don't see how they could be anybody else's.

Mr. Wright: I have no further questions.

Cross-Examination

By Mr. Gardiner:

Q. Mr. Hutcheson, your carrier, U. S. Aircoach, frequently had occasion to carry onward passengers who came into the State from eastern cities upon your carrier to Oakland, did it not?

A. Yes, sir.

Q. Would this be a daily occurrence?

A. Not every day, but for a long while we did operate our own flight between Burbank and Oakland on U. S. Aircoach.

Q. Would you say that was as frequent as five times a week?

A. Just depending on the number of trips we had coming in or whether some other carriers had enough passengers for us to carry. It was strictly a contract basis. It wasn't a regular occurrence. If there were passengers, we went.

Q. If there were available passengers who entered [172] through U. S. Aircoach or some other manner, usually one of the irregular carriers, you would——

A. Set up a flight.

Q. ——set up a flight and transport them to Oakland?

A. That's right.

Q. When that aircraft returned from Oakland

(Testimony of Fritz Hutcheson.)

would it generally also carry passengers from Oakland to Burbank who were destined eastbound on your flight, or some other irregular carrier?

A. Whether they were destined on our flight or any other, we had a combination of eastbound passengers that would come from Oakland to Burbank.

Q. When you referred to looking for the first available carrier to utilize, other than your own carrier, for passengers, would that be only in instances where you had a surplus or more passengers than you could carry on your own flight?

A. Well, in times when we couldn't carry all the passengers on our own flight, as far as going to Oakland is concerned, then we would put them on whatever available carrier that we could get space on. That didn't happen very often. We didn't have that many passengers. We usually had to take them from somebody else to fill up our planes.

Q. The occasions upon which you would transfer or have the ticket agent make arrangements for the onward transportation [173] for other passengers were infrequent?

A. I believe you would say they were infrequent.

Q. Your company did not receive any commissions from the sales of Pacific Southwest Airlines tickets, did it?

A. Sir, that is an accounting problem that I couldn't answer.

Q. Then you did not tell Mr. Stout on any occasion upon which you can remember that that was a fact?

A. That we received a commission?

(Testimony of Fritz Hutcheson.)

Q. Yes.

A. I don't recall. It was strictly an accounting problem.

Q. When a passenger transfer manifest was prepared, would it be done before or after the arrival of a westbound flight from an eastern point in Burbank?

A. I believe that varied. Our stewardesses had instructions at any time that we had passengers going from Burbank to the two destined points, which was usually Oakland and San Diego, our stewardess had instructions as far as the carrier was concerned to prepare a separate manifest showing San Diego and Oakland passengers on separate manifests. Now, sometimes they did, I believe, and sometimes they didn't. When they didn't, I believe the agency in Burbank prepared the manifest.

Q. When the stewardesses prepared those manifests, would [174] they place therein the name of any carrier on which such passengers were going to go to San Diego and Oakland?

A. They would have no idea what they were going on.

Q. That could not be determined by the flight personnel?

A. That was never determined by the flight personnel. They didn't have the slightest idea.

Q. Did any of the personnel of the U. S. Aircoach have any idea what specific carrier would be used for a specific flight?

(Testimony of Fritz Hutcheson.)

A. None whatsoever.

The Court: May I ask a question?

The Witness: Yes.

The Court: When was it determined, then, which carrier was to carry the passenger to San Diego?

The Witness: Our procedure was this: The captain would call from his last stopping point, and he would say, "I have so many San Diego passengers, I have so many Oakland passengers." He would call our flight operations. From that our flight operations would notify the counter and tell them that we have, say, 15 passengers going to Oakland, two passengers to San Diego. Then it would be up to them—they knew what time the airplane would arrive, it would be up to them to secure transportation or notify operations that there were enough passengers to make the Oakland flight, and he would run the DC-3. At that time they would decide—they would immediately [175] start trying to find out who had the first flight going to either destination, if they were going to put them on another carrier other than our own. Most of the times we handled them ourselves. Immediately when the flight came on we had our plane sitting on the ground waiting to take those passengers on with the smaller aircraft.

The Court: When you put them on another line, then your policy was to use the first available flight?

(Testimony of Fritz Hutcheson.)

The Witness: The first available flight that we could get the passengers out on.

Mr. Gardiner: Is that all, your Honor?

The Court: Yes.

Q. (By Mr. Gardiner): When you referred, in the last answer, to putting them on another line, you had reference, did you not, to the ticket agency placing them——

A. The ticket agency would make arrangements for putting them on another carrier.

Q. And would it be a correct statement to state that the late time in determining which carrier was to be used was based upon the variances in weather, both transcontinentally and weather both north and south, which would affect the estimated time of arrival of your flight, as well as coastwise?

A. As well as incoming and as well as the flight going north or south. [176]

Q. So for practical purposes, which carrier you wished to use could not be determined?

A. They couldn't until about an hour before the flight arrived, or operations would check the weather and find out where the airplane was situated, in other words, how close it was to Burbank, through C. A. control, and from that they would judge what time the plane would arrive, and that would be the time they would make arrangements for transportation for the passengers.

Mr. Gardiner: I have no further questions.

The Court: Any questions?

(Testimony of Fritz Hutcheson.)

Mr. Ackerson: I don't believe I have any right to question this witness, your Honor.

Mr. Wright: I have a couple more, your Honor.

Redirect Examination

By Mr. Wright:

Q. In answer to Mr. Gardiner's question, Mr. Hutcheson, I believe you stated that the agency people at Burbank would, upon notification, start making arrangements for the first available onward transportation of incoming passengers?

A. That was the usual procedure, sir.

Q. And what agency were you referring to?

A. Well, during the year of 1953 there was Safeway Aircoach, American Air Bus, Interstate Air Bus, Metropolitan. [177] I believe those are the different carriers that operated during that period of time.

The Court: I understand that there was only one agency at a time?

The Witness: Only one agency at a time, yes, sir, but different ones handled those flights at different times.

Q. (By Mr. Wright): Those agencies represented U. S. Aircoach?

Mr. Gardiner: I believe that is calling for a conclusion.

The Court: Sustained.

Q. (By Mr. Wright): Did U. S. Aircoach have any agreement with any agent located at Oakland

(Testimony of Fritz Hutcheson.)

Air Terminal? A. I believe——

The Court: Counsel, evidently they had an agreement of some kind.

Do they have any written agreement?

The Witness: I believe that U. S. Aircoach has about 50 or 60 agreements on file with the Civil Aeronautics Board, sir.

The Court: That is written agreements?

The Witness: Yes, and a lot of them are verbal, too.

Q. (By Mr. Wright): Did it have such agreements with the agencies that you just named?

A. As best as my recollection is concerned, I believe [178] that each agency had a written agreement with U. S. Aircoach. I am quite sure they did. I couldn't say exactly sure which ones did and which didn't, but I believe as well as possible my instructions were that the Operations file agreements with all carriers and agencies that we did do business with.

Whether they did or not I couldn't say.

Q. I further understood your testimony, in reply to Mr. Gardiner, that your captain at his last stop before Burbank would notify your flight operations department of the number of passengers that would need onward transportation?

A. He would generally notify either myself or the chief pilot, or whoever happened to be in operations, he would notify them as to how many passengers they had—well, sometimes it wasn't the flight captain, sometimes it would be the agent in

(Testimony of Fritz Hutcheson.)

Kansas City, that was usually the point that they would call from. After the plane had left the agent would call.

Q. You say that sometimes you received calls?

A. I received calls.

Q. When you received such a call what did you do?

A. I usually went back to sleep for a while. It is pretty early in the morning. But about 7:00 or 8:00 o'clock in the morning I would call the counter and tell them how many incoming passengers there were to be off-spaced, or I [179] would call Mr. Blackwell and tell him, because he usually handled them.

Q. Who was Mr. Blackwell?

A. He is an agent that also handled the DC-3 shuttle flight that we had to Oakland, he handled the space on that.

Q. You instructed people at the counter to arrange the onward transportation?

A. They had standing instructions.

Q. Did these agents also represent other air carriers or air lines?

A. Oh, yes, they sold tickets on all the air lines.

Q. Do you know whether they sold Pacific Southwest tickets?

The Court: Of your own knowledge?

The Witness: I assume they did. They sold all the air lines.

The Court: The question is do you know, not what you assume.

(Testimony of Fritz Hutcheson.)

The Witness: I am positive they have sold tickets on Pacific Southwest and all the air lines.

Q. (By Mr. Wright): And California Central?

A. Yes, and all the rest of them, so far as I know.

Mr. Wright: That is all.

Mr. Gardiner: Nothing further.

The Court: May this witness be excused? [180]

Mr. Gardiner: Yes.

The Court: You may be excused.

We will now take a recess until 10 minutes after eleven.

(Recess taken.)

The Court: Call your next witness.

Mr. Wright: I will call Dorothy Laumeister.

DOROTHY LAUMEISTER

called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

The Clerk: Will you state your name?

The Witness: Dorothy Laumeister.

Direct Examination

By Mr. Wright:

Q. Miss Laumeister, were you formerly employed by Pacific Southwest? A. Yes, I was.

Q. When were you first employed?

A. June 23, 1953.

Q. In what capacity?

(Testimony of Dorothy Laumeister.)

A. I was employed as a reservationist.

The Court: As a what?

The Witness: Reservationist.

Q. (By Mr. Wright): At what office of Pacific Southwest [181] did you work?

A. At the Oakland office.

Q. That was in June of '53?

A. That is correct.

Q. Subsequently did you work at another office of Pacific Southwest?

A. Yes, sir, I worked at San Francisco.

Q. Where were these offices located?

A. The Oakland office was at the Oakland airport, and the San Francisco office was at the San Francisco airport.

Q. At that time do you know whether or not Pacific Southwest had any ticket offices in downtown Oakland or downtown San Francisco?

A. Not in downtown Oakland, but in San Francisco they have a ticket office downtown at 277 Post.

Q. Is that the office you were employed in?

A. No, sir; I was employed at the field.

Q. At the Oakland office in June of 1953 will you tell us briefly what your duties were?

A. Well, mainly my duties were taking reservations over the phone, mainly, working at the counter, selling tickets, using the teletype machine for sending and receiving messages; and I also made up a bank.

Q. You referred to the teletype machine; what

(Testimony of Dorothy Laumeister.)

were the other stations that you could communicate with by the use [182] of the teletype machine at Oakland?

A. I could communicate with San Francisco, field, Burbank, and then when Long Beach was added to our stops I communicated with Long Beach, and San Diego.

Q. Will you describe for us what the procedure was on handling reservations, which you say you received over the phone? From whom did you receive them, and what were your duties in connection with them?

A. Well, we received calls from various agents, from the other lines that were located there in the building at which we were located in Oakland, and from private parties.

Q. When you refer to the other agents, do you mean independent ticket agents?

A. Some of them were independent ticket agents.

Q. Do you remember the names of any of these agencies?

A. Well, Skycoach, North American, Trans-ocean Airlines, Berkeley Travel, Don Travel, and there was also Sky Tickets.

Q. Did these agencies that you have just named have Pacific Southwest ticket stock?

A. Yes, sir, they did. However—I will change that. I don't believe that North American Airlines carried our stock at the field; the agents downtown carried them. Nor Skycoach at the field.

Q. When you received a call for a reservation

(Testimony of Dorothy Laumeister.)

from, for instance, North American, I believe you said, was that for [183] the purpose of requesting space or confirming space, or what was the purpose of it?

A. Yes, sir, they would call in to the office either over the inter-airport phone, or we may receive a call from downtown, even San Francisco, requesting a certain number of seats to be blocked for their passengers.

Q. And if the space was available you confirmed the request? A. Yes, sir.

Q. Did you have to do any ticketing in connection with those passengers?

A. Yes, sir, we did.

Q. Will you tell just what you did?

A. Well, after blocking the space and having a confirmation from the airline that was requesting the space, we would prepare our manifest and hold that many seats for them, and then the passengers were checked in at our counter and we issued tickets from Oakland to Burbank or San Diego, whichever the destination was, to these passengers.

We did not issue the tickets directly to them. They were held on the manifest, the ticket numbers placed opposite their names, and then the tickets were given to the stewardess.

Q. Was that the regular procedure in every instance? Didn't the passengers ever receive their ticket?

A. Unless they were paying for a portion of their ticket. [184] In most instances it would be

(Testimony of Dorothy Laumeister.)

the tickets by the other airline were paid to Burbank, and then if the passenger wanted to go to San Diego they would purchase their own ticket between Burbank and San Diego.

Q. Did you ever have any requests from North American or Skycoach for space for passengers connecting with other flights at Burbank?

A. Yes, sir, I believe we did.

The Court: Keep your voice up, please. Counsel can't hear you, and they are entitled to hear.

Q. (By Mr. Wright): Going back to your previous answer, the payment for tickets, I don't think I quite understood it. You said something about when they are paying for their own transportation.

A. Their own transportation—if they wished to go beyond Burbank, I am speaking right now of what I have in mind is Transocean who terminate their flight in Burbank, and if the passenger wished to go on to San Diego from Burbank, they would have to purchase their own ticket from Burbank to San Diego.

Q. And the Transocean flights that you are referring to would originate where?

A. Some of the flights originated in Honolulu, some of the flights also originated as far as Japan and Guam, Honolulu. [185]

Q. In connection with those flights did you get requests for space from Transocean?

A. Yes, sir, we would.

Q. That would be in advance of the arrival of the flight?

A. Yes, sir, that's right.

(Testimony of Dorothy Laumeister.)

The Court: May I ask a question?

When you would get a request from Transocean or from United, or any other airline, for space, either from Burbank to San Diego or from Oakland to Burbank, would you have any information as to where the passenger originated?

The Witness: No, not any direct information, no, sir.

The Court: No direct information?

The Witness: No.

Q. (By Mr. Wright): Did you have anything to do with collections on ticket sales made in Oakland and San Francisco? A. Yes, sir.

Q. Will you tell us what you did in that connection?

A. After the passengers had checked in to the counter we knew the exact amount of people who were going, how many full fares, how many half fares, we would make out, first of all, a tax form showing that Transocean, North American, whoever has blocked the space, will pay the tax, and then we make out an exchange order showing how many passengers, full-fare passengers, how many half-fare passengers, were on the [186] flight, the flight number, the date and the destination, and then we would bill or take that directly to the air lines that had requested it, and they would, in turn, give us a check.

Q. By exchange order do you refer to the type of document which is marked "Exchange Order" on this Exhibit No. 2?

(Testimony of Dorothy Laumeister.)

A. Yes, sir, that is what we used.

The Court: I am sorry. Money talks, but money is not talking very loud. Will you speak out, please?

The Witness: I am sorry. The answer was yes.

The Court: All right.

Q. (By Mr. Wright): You say in connection with these passengers this exchange order would be made out after the passengers had been checked in?

A. As a rule, sir.

Q. What tickets would the passengers present at the time they checked in?

A. The only times that I can remember having other tickets presented were from Transocean passengers. Those tickets were brought to us so that we could get the names and the weight of their baggage.

Q. And these people whom you just described as checking in, the space requested and confirmed to North American, they presented no tickets?

A. No, sir, they did not. [187]

Q. Did you have some means of identifying them?

A. Yes, they would have—usually have their tickets, but we did not have to validate them or add anything to them.

Q. Would they have a Pacific Southwest ticket?

A. No, sir, they would not.

Q. What kind of ticket would they have?

A. They would have their ticket from the air line on which they were going from Burbank to the East.

Q. You mean if the space was requested and

(Testimony of Dorothy Laumeister.)

confirmed by North American, the passengers would present a North American ticket?

A. For the various flights, yes.

Q. Which would show Oakland or San Francisco as the origination?

A. I couldn't answer that. I never examined one that closely, sir.

The Court: May I ask a question?

Do you know of your own knowledge—now, I don't want you testify as to what you presume or what you think—but do you know of your own knowledge where a ticket has been sold to a passenger going East from Burbank to the eastern destination, and then the airplane company has purchased from Pacific Southwest a ticket from Oakland to Burbank, do you know that of your own knowledge?

The Witness: Will you say that again, [188] please?

The Court: Can you read it, please? Maybe I didn't say it very clearly.

(The question was read by the reporter.)

The Witness: When they request the space, they purchase the ticket, because they give us the check for the ticket.

The Court: When they purchase the space, do they tell you that this is a part of a flight to the East?

The Witness: Not in those words, no.

The Court: What do they tell you?

(Testimony of Dorothy Laumeister.)

The Witness: They call up and say that they want so many seats to Burbank.

The Court: That is all they tell you?

The Witness: Yes.

The Court: And then when the passenger shows up, does the passenger show you the ticket that he has got for the eastern flight, or he just says, "My name is So-and-So and I have a reservation here to Burbank"?

The Witness: It is handled in various ways. We have people go to ticket their eastern flight and then come to Pacific Southwest to check in on our flight to Burbank. And also we have received the names of the passengers from the other airline, and the people would check in at our counter just to get their gate passes.

The Court: Let me ask you, as an ordinary thing did you know that these passengers from other air lines, that is, from [189] Oakland, going from Oakland to Burbank, were starting on a trip East—would you know that?

The Witness: Yes, I would know it.

The Court: As a general rule?

The Witness: Yes, I would.

The Court: And the trip from Oakland to Burbank was only the first step of this trip?

The Witness: Yes, that's right.

Q. (By Mr. Wright): In connection with this space that was purchased by these other air lines, had you ever received any instructions from your

(Testimony of Dorothy Laumeister.)

company as to any policy with regard to that procedure?

A. Well, we were requested to accept these reservations and blocking of space for the air lines, to co-operate with them.

Q. Do you know from whom those instructions came?

A. They came from the main office in San Diego.

Q. In connection with the teletype that you mentioned, did you ever get any inquiries on that teletype from San Diego regarding the amount of space sold on any particular flights?

A. Would we get any what, sir?

Q. An inquiry from San Diego—that was the main office, wasn't it? A. Yes. [190]

Q. —regarding the space sold or available on any of these particular flights?

A. Yes, sir, we would.

Q. Did you ever receive over the teletype any instructions regarding blocking out any space for these flights? A. In what respect?

Q. For a particular group or for any particular purpose that was handled through San Diego rather than directly to your office?

A. There have been occasions when we have.

Q. Have there been any occasions when flights were delayed to accommodate any of these agencies or other air lines?

A. Yes, sir, there have been occasions.

Q. Would those delays be your responsibility or

(Testimony of Dorothy Laumeister.)

did you receive instructions specifically with regard to each such instance from some other source?

A. We would have to receive instructions from some other source.

Q. And where would that come from?

A. That would come from San Diego, from one of the dispatchers.

Q. And that would be by teletype?

A. Yes, sir.

Q. Do you recall any particular instances when that [191] occurred?

A. I recall one, the Transocean Airlines, where the flight was delayed 30 minutes, because the flight from Honolulu was delayed and did not arrive on time.

Q. And your instructions to hold came from San Diego by teletype? A. Yes, sir.

Q. Are you presently employed?

A. Yes, sir, I am.

Q. By whom?

A. Airline Reservations in San Diego.

Q. And for how long have you been employed by Airline Reservations?

A. Since the 28th of June.

Q. And what is Airline Reservations?

A. It is a ticket agency.

Q. In what capacity are you employed there?

A. I am the ticket agent.

Q. Where is Airline Reservations located in San Diego?

(Testimony of Dorothy Laumeister.)

A. It is located on the Plaza, 341 Plaza, in the Western Union office.

Q. Is it a separate office from the Western Union office?

A. Yes. It is more or less of a corner of the lobby in the Western Union office. [192]

Q. And you are presently selling tickets for air lines? A. Yes, sir.

Q. And for what air lines are you now selling tickets?

A. We handle tickets for North American Airlines, for Skycoach, for Transocean Airlines, for California Central, and for Pacific Southwest.

The Court: Now, may I ask this witness a question?

Supposing the customer comes into your office and wants a ticket to New York, the flight originates from Burbank, and you call up Pacific Southwest for a reservation from San Diego to Burbank, what do you tell Pacific Southwest?

The Witness: I request a space from San Diego to Burbank.

The Court: Do you tell Pacific Southwest, "This is a passenger that is going to New York"?

The Witness: No, as a rule I don't, sir.

The Court: Just that you want space from San Diego to Burbank?

The Witness: Yes, that is correct.

Q. (By Mr. Wright): Do you have any idea what the average volume of ticket sales is at the Airline Reservations office where you are now em-

(Testimony of Dorothy Laumeister.)

ployed? A. No, sir, I don't know.

The Court: You sell several, don't you?

The Witness: Oh, yes.

Q. (By Mr. Wright): When a person comes into the office [193] in San Diego where you are presently employed and buys a ticket or buys transportation from San Diego to New York City, what procedure do you do? How do you handle that request? How do you ticket?

A. When they request a space, of course they immediately want to know what time they will depart San Diego, and we tell them that they will be departing either 6:15 or 6:35, then we request the space from Skycoach or North American, wherever the destination is of the passenger and which line they are booked on, and the space from Pacific Southwest or California Central, then we make out a ticket via North American or Skycoach, and the ticket reads from Burbank to the destination, but the fare quoted is the fare from San Diego to the destination. We then issue another ticket either on Pacific Southwest or California Central and we ask them to check in at the counter 30 minutes before flight time, they will go to Burbank and change planes, check in at the Skycoach counter for their passage East.

The Court: Now may I ask a question?

You issue two tickets?

The Witness: That's right.

The Court: Now, do you put the second ticket—do you attach the second ticket to the first ticket?

(Testimony of Dorothy Laumeister.)

The Witness: We do not at that office, sir.

The Court: You don't paste it on? [194]

The Witness: No. We put it in a separate folder.

The Court: In a separate folder?

The Witness: Yes, sir.

Q. (By Mr. Wright): Are the tickets always placed in separate folders?

A. Unless we don't have a Pacific Southwest or a California Central **folder**.

Q. And when you don't have one or the other, then what do you do?

A. It is placed in the same envelope.

Q. What does the passenger pay in the way of fare?

A. His fare is from San Diego, the fares for Skycoach, especially, are from San Diego to their destination in the East.

Q. That is the total amount that is paid by the passenger?

A. That is correct.

Q. The Skycoach fare plus tax?

A. Yes.

Q. The passenger does not, then, pay a separate fare for the Pacific Southwest or Central ticket?

A. No, sir, he does **not**.

Q. Do you know what commission basis Airline Reservations works on?

A. They have a commission from Pacific Southwest and [195] California Central, also commission from North American and from Skycoach.

Q. Do you recall offhand what the Skycoach fare is from San Diego to New York?

A. I believe it is \$108.90.

(Testimony of Dorothy Laumeister.)

Q. Does that include the tax?

A. That includes the tax, yes.

Q. That would be a one-way ticket?

A. One-way ticket.

Q. That is the amount that you would collect from the person buying a one-way ticket from San Diego to New York?

A. Yes, that is correct.

Q. How much of the \$108.90 is remitted by Airline Reservations to Skycoach?

I will withdraw that question.

The Court: I assume that you remit to Skycoach its part of the ticket, and to Pacific Southwest its part of the ticket, and you retain your commission?

The Witness: We retain the commission from each.

The Court: You retain the commission from each?

The Witness: Yes, sir. There are individual reports sent to each air line.

Q. (By Mr. Wright): In reporting the sale of that ticket, that Skycoach ticket, on your sales report, is your sales report made daily or [196] weekly?

A. It is made weekly.

Q. In that sales report what would you show, if anything, in connection with the San Diego to Burbank fare?

A. I can't answer that. I haven't done enough of the bookkeeping there to know how that is handled.

(Testimony of Dorothy Laumeister.)

Q. In any event, there is no separate fare paid by the passenger? A. By the passenger, no.

Mr. Wright: I have no further questions.

The Court: Cross-examine.

Cross-Examination

By Mr. Gardiner:

Q. Miss Laumeister, you were testifying as to working for Pacific Southwest in San Francisco and Oakland; while employed there I presume you became familiar with which of the irregular carriers had flights from Burbank to either of those airports? A. Yes, sir.

Q. Did any of them have flights to San Francisco Airport? A. No, they did not.

Q. Do you know now through your previous employment whether any of those irregular carriers have flights from San Francisco to Burbank? [197]

A. I don't believe any of the irregular carriers go to San Francisco.

Q. They all go to Oakland? A. Yes, sir.

Q. You spoke of the term blocking out space, when you were an agent for Pacific Southwest; will you explain that somewhat technical term for us?

A. They would call and say that they wanted 19 seats held, that is just taking a figure, we would hold 19 seats out of our space that we were holding at Oakland, and would not book any passengers in that space. We would hold that space for the air line that requested it, and they would give us the names

(Testimony of Dorothy Laumeister.)

for those spaces that we held. I am speaking of a reservation card.

Q. In other words, the blocking off is the making of a reservation? A. Yes, it is.

Q. You would reserve 19 seats?

A. That is correct.

Q. When you say you did that for the air line, did you mean the air line or the agency?

A. We received those requests from the air line there in Oakland. They had their offices there.

Q. Which air line is that?

A. North American, Transocean, or Sky-coach. [198]

Q. By North American, do you know the full name of that organization?

A. North American Airlines.

Q. Could it be North American Airlines Ticket Agency?

A. No. We held it under North American Airlines.

Q. Do you know if there are two companies by that name? A. I don't know, sir.

Q. Have you any information as to the names of the companies operating flights on which North American Airlines Ticket Agency sends passengers?

Mr. Wright: I object to that, if it please the Court. That is assuming facts not in evidence.

The Court: The question is do you know.

She may answer it yes or no.

The Witness: No, I don't, sir.

Q. (By Mr. Gardiner): You are not familiar

(Testimony of Dorothy Laumeister.)

with that? A. No, sir.

Q. All you recall is that you would receive requests for space from North American?

A. From the North American Airlines at the airport.

Q. Which airport? A. Oakland Airport.

Q. Would you receive requests from their city ticket office? [199] A. Yes, we would.

Q. And going back, again, to the reservation or blocking off, if a business concern in San Francisco with whom you had done business in the past would call up and ask for, say, eight seats or ten seats, would you similarly reserve them for them?

A. If it was a private party we would reserve them. We would need their names. And also, in order to hold them until flight time they would have to pick up their ticket before time.

Q. But, as I stated in my question, if you knew the party you would hold it for them a reasonable length of time? A. Yes.

Q. And if an individual called up and said, "I would like to go to Burbank," or "Long Beach," you would block off or make a reservation for that passenger?

A. Would you repeat that, please?

Mr. Gardiner: Would you read the question?

(Question read by the reporter.)

The Witness: We would make a reservation for them.

Q. (By Mr. Gardiner): You mentioned that

(Testimony of Dorothy Laumeister.)

tickets were not in all instances given to—withdraw that.

The North American Company to which you were referring would also purchase tickets, would it not, for passengers who wished to go to San Diego from Oakland or San Francisco? [200]

A. They would purchase tickets.

Q. Would they make a reservation for passengers who wished to make a flight?

A. From the agencies downtown they would, yes.

Q. In other words, North American sold tickets on Pacific Southwest at that time—

A. Their agency, yes.

Q. —for persons who were engaged in purely intrastate flights? A. Yes.

Q. And they did a considerable amount of business on that basis, did they not?

A. We did not receive too many requests from North American from the downtown Oakland or San Francisco office for individual space. Most of the requests came from the various travel bureaus.

Q. At that time PSA had a downtown ticket office in San Francisco, did they not?

A. In San Francisco, yes.

Q. You referred to Transocean; do you know the full name of that company? A. The full name?

Q. Of Transocean.

A. Transocean is the only way that I know them by.

Q. With respect to your testimony that tickets were not [201] always given directly to passengers

(Testimony of Dorothy Laumeister.)

for whom space had been reserved by North American, was that because the tickets had not been paid for?

A. They were not given to the passengers because they were given to the stewardess. Their passage—Transocean on the ticket shows from the origination, which would be Honolulu, or Wake, to Burbank, and they would come to our office and we would issue a ticket number to them, and they would never see the ticket, the passenger would never see the ticket.

Q. Was the reason for that because there was a sizeable number of them and it simplified things to give them directly to the stewardess?

A. I don't know about that, sir. I know that the practice was to keep the tickets—like from my drawer I would issue so many tickets for the amount of people, the ticket number was placed opposite their names on the manifest, and the tickets held and given to the stewardess.

Q. The ticket was given to the stewardess for each passenger?

A. They were all together, sir.

Q. But if there were ten passengers she would have ten individual tickets?

A. Yes.

Q. And those were PSA tickets? [202]

A. Yes, sir.

Q. I believe you testified that when an agency requested—withdraw that.

I believe you stated that Skycoach, after they made reservations, had requested a number of reservations, and the passengers had been trans-

(Testimony of Dorothy Laumeister.)

ported, you would deliver to Skycoach an exchange order of the type shown you? A. Yes, sir.

Q. Was that used as a billing device or method to indicate to Skycoach the amount of money owed to PSA?

A. Yes, it was, sir. We would make two copies: one was retained by Skycoach, the other was put into my cash report, if the tickets came out of my drawer, along with the check, and sent down to be banked.

Q. Those two copies would thereby give each office a record of the payment? A. Yes, sir.

Q. You mentioned that North American also sold some tickets on Pacific Southwest Airlines to passengers who were only going to Burbank?

A. From the agents downtown, yes.

Q. Would the agent indicate whether or not the passenger was going any further than Burbank?

A. As a rule, no.

Q. Then there was no way of your telling when a ticket [203] agency called up and asked for space to Burbank whether or not the passenger was going on to Long Beach or was going to make a stopover and go on to San Diego, or he might go East, or in any other direction?

A. Well, there were stopovers, yes. They would say where they were stopping over.

Q. But if the ticket was only to Burbank?

A. If the ticket was only to Burbank, no.

Q. You spoke of a North American Airlines ticket form. You don't happen to have one of those

(Testimony of Dorothy Laumeister.)

with you, do you? A. No, sir, I do not, sir.

Q. Are you familiar with the form, the interline form?

A. Pretty much so. I have not sold as many North American tickets as I have Skycoach. I am much more familiar with the Skycoach ticket.

Q. Is it correct that that North American ticket form is given to the passenger and is used by him to procure a flight coupon when he arrives at Burbank?

A. Yes, we give them the ticket, and they are to present that at the ticket counter in Burbank, and that is their flight, their ticket to their destination.

Q. That same ticket is used to carry them to their destination?

A. Yes, it is a regular ticket form.

Q. Are you aware of any document entitled Flight Coupon [204] issued on North American stock? A. I don't quite know what you mean.

Q. You mentioned the fare of Skycoach, Miss Laumeister, from San Diego to New York, and I believe you quoted the figure of approximately \$108 one way; do you know what the fare charged by Skycoach is for a one-way ticket from Burbank to New York?

A. No, I don't, sir. All of our fares are from San Diego. They do have a breakdown, but I haven't had an occasion to use it.

Q. The fare from Burbank to New York would be lower than—as a result of that breakdown—than from San Diego?

(Testimony of Dorothy Laumeister.)

A. I assume it would, sir. I don't know. I can't say for sure.

Q. Does Skycoach have what they call excursion flights? A. Yes, they do.

Q. Are those excursion flights good for passage from New York to Burbank—to San Diego, or only to Burbank?

A. Those excursion flights, the fare is quoted from San Diego. However, they purchase—they must pay extra for the fare from San Diego to Burbank on an excursion.

Q. And that extra amount would be the amount of the carrier used selected by the agent to take that person from San Diego to Burbank?

A. Yes. However, as I say, the fare that we quote and [205] the fare that I have is the fare from San Diego to New York, and return. It is good only on a round trip.

Q. But to get up to Burbank they have to pay an additional amount?

A. There is an additional fare.

Mr. Gardiner: No further questions.

The Court: Any other questions?

Mr. Ackerson: Your Honor, this young lady didn't testify about my client at all. I don't think I can cross-examine her.

Redirect Examination

By Mr. Wright:

Q. If I understood your answers to Mr. Gardiner's questions, you say that the passenger does pay

(Testimony of Dorothy Laumeister.)

an additional fare when he buys a round-trip excursion ticket? A. Excursion tickets, yes.

Q. And that is the lowest fare that is available, is it not? A. Yes, sir, that is correct.

Q. I think you testified previously that Airline Reservations, where you are presently employed, also sells California Central tickets?

A. Yes, sir.

The Court: That is not proper redirect. You are going into something that wasn't opened up at all on cross-examination. [206]

Mr. Wright: I agree with that, but I want to use this witness for testimony in connection with California Central. That is one of the reasons that I waited.

Mr. Ackerson: I think the attempt comes belatedly.

The Court: Well, he might have been misled.

Mr. Ackerson: It is all right, your Honor. I won't object.

The Court: All right.

Mr. Wright: I thought that was the procedure we were following yesterday.

The Court: The answer was yes?

The Witness: Yes.

Q. (By Mr. Wright): Is there any difference in the procedure that you would handle in ticketing a Skycoach passenger on a California Central flight between San Diego and Burbank than the procedure you have already testified to regarding Pacific

(Testimony of Dorothy Laumeister.)

Southwest? A. No; the procedure is the same.

Q. There are two tickets issued?

A. Yes, sir.

Q. What instructions regarding checking in do you give the passenger at the time you ticket them?

A. We advise them to go—if it is on California Central, to check in at the California Central Airlines ticket [207] counter, passenger service counter, at Lindbergh Field, 30 minutes prior to flight time.

Q. That is after you have confirmed the space?

A. Yes, that is after confirmation.

Q. These tickets are being sold every day?

A. Yes, sir.

Mr. Wright: That is all.

Mr. Ackerson: No questions.

The Court: May this witness be excused?

Mr. Wright: Yes.

Mr. Ackerson: Yes.

The Court: May I inquire how many more witnesses you have?

Mr. Wright: Your Honor, I still have five left.

The Court: Well, they grew overnight.

Mr. Wright: Yes, they did.

The Court: Well, then, we had better come back at 1:30.

Mr. Ackerson: If your Honor please, I wonder if there is any chance at all of getting through today.

The Court: I don't know. Your guess is as good as mine.

Mr. Ackerson: I don't see how we can conceivably get through.

The Court: We will come back at 1:30 and find out. Court will stand at recess now until 1:30 o'clock.

(Whereupon at 12:00 o'clock noon a recess was taken until 1:30 o'clock p.m. of the same day.) [208]

Friday, July 23, 1954, 1:30 P.M.

The Court: Call your next witness.

Mr. Wright: Stephen C. Russell.

STEPHEN C. RUSSELL

called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

The Clerk: State your name.

The Witness: Stephen C. Russell.

The Clerk: S-t-e-p-h-e-n?

The Witness: Yes.

Direct Examination

By Mr. Wright:

Q. Mr. Russell, were you formerly in the employ of Pacific Southwest? A. Yes, sir, I was.

Q. And in what capacity?

A. As copilot and captain.

Q. When did you commence your employment with Pacific Southwest?

A. With the Airlines, approximately July 14 of 1951.

(Testimony of Stephen C. Russell.)

Q. And were you in their employ for a period during 1953? [209] A. Yes, sir, I was.

Q. In what capacity at that time?

A. As captain, flight captain.

Q. What route or routes of Pacific Southwest did you operate as a captain?

A. From San Diego to San Francisco, Oakland, and the intermediate stops, namely, Long Beach and Burbank.

Q. Can you tell us how the dispatching is handled for Pacific Southwest, or was, at least, during the time that you were captain in '53?

A. Well, it was the captain's responsibility to check the weather, and of course the number of passengers, in order to determine gas load and so forth, to check the routing that he desired, and see if it coincided with the dispatcher on duty; and after the airplane was fueled and loaded with passengers and baggage, to check and see if the weights, baggage, and so forth corresponded to what was on the weight balance, and have the dispatch signed by the dispatcher captain, and that was it, you were on your way.

Q. Was the dispatching done at each station?

A. The dispatching was primarily done at San Diego. However, dispatching was relayed up and down the entire route that Pacific Southwest fly, by teletype machine.

Q. During the period in 1953 when you were a captain, did you have any additional duties, other than command of the [210] aircraft during flight?

(Testimony of Stephen C. Russell.)

A. Well, yes, sort of. It was the company policy of public relations with the passengers.

Q. Do you mean to make announcements to the passengers?

A. Yes, sir, we would make announcements pertaining to weather, the route we were flying, altitude, any points of interest, time of departure, where the passengers may claim their luggage, and so forth and so on.

Q. Did you as a captain or as an employee of Pacific Southwest have any duties in connection with baggage?

A. Yes, sir.

Q. What were those duties?

A. Duties of the pilots, according to company policy, was to segregate and store baggage on the airplane itself, in order that there may be an expedient method of relieving the load at your destination or at the particular passenger's destination.

Q. On the flights which you captained, and which stopped at Burbank, was there any special method of handling the baggage?

A. Well, there was in one sense. In Burbank and Oakland. However, the other stops were about the same. For instance, San Diego, Long Beach and San Francisco. But Oakland and Burbank is where we had our transfer of transcontinental luggage, which wasn't exactly normal as far as we were [211] concerned in handling the luggage.

Q. How was that handled?

The Court: May I ask a question?

What do you mean by transcontinental luggage?

(Testimony of Stephen C. Russell.)

The Witness: Your Honor, passengers holding luggage that was going on from Burbank to points east, or from Oakland points west.

The Court: The baggage was marked, was it, as it went on the plane?

The Witness: Yes, sir, it would have to be, otherwise we wouldn't know where it got off.

The Court: How was it marked?

The Witness: Well, as an example, Pacific Southwest had a ticket or a baggage claim check and identification tag, which the passenger retained a portion thereof in order to claim the baggage at the destination, and each ticket was of a different color and had the designation or abbreviation of the particular station. As an example, Long Beach would be LGB, which in air line language is Long Beach.

The Court: How did you mark your transcontinental baggage?

The Witness: Well, transcontinental baggage we would—as an example, at times there would be two baggage tags, there would be one on there from the transcontinental air line or transoceanic [212] air line——

Mr. Gardiner: I would like to move that the witness' answer be stricken as not responsive. The question was how did he mark it or how did the carrier mark it?

The Court: How did you mark it? Was it marked with different colored tags?

(Testimony of Stephen C. Russell.)

The Witness: Your Honor, I didn't mark it, if that is the question.

The Court: Do you know how it was marked?

The Witness: Yes, that is what I am trying to relate.

The Court: Was it marked with different colored tags?

The Witness: Yes, sir, it was marked with different tags.

The Court: Transcontinental had a different tag?

The Witness: On most occasions, yes.

The Court: Where were the transcontinental tags put on? Were they put on by Pacific Southwest?

The Witness: No, sir. If the passenger was going from the west to east, then on 90 per cent of the occasions we were the only one that had a baggage tag on the baggage until it arrived at the point of transfer, which in that case would be Burbank. However, on westernbound flights the baggage got off the transcontinental, or—that's right, the transcontinental airplane would naturally have the baggage tag on it from the transcontinental airplane, so therefore on many occasions we wouldn't have to put one of our tags on it.

The Court: I understood from other witnesses that assuming [213] that a passenger came in from the East to Burbank, that the passenger would be unloaded, the baggage would be unloaded, and it would have to be claimed by the passenger. Now, wouldn't the tags come off at that time?

(Testimony of Stephen C. Russell.)

The Witness: No, sir, that isn't exactly true, you see.

The Court: Well, do you know what the procedure was?

The Witness: Yes, sir, I certainly do.

The Court: What was the procedure?

The Witness: I handled it every day.

The Court: What was the procedure?

The Witness: There were two procedures. No. 1 was that on occasions the passenger would, as an example, a hypothetical example, a passenger coming in from Chicago that was destined for San Diego, he would arrive Burbank, get off the airplane, claim his luggage, check into Pacific Southwest, board our airplane, Pacific Southwest with our claim check and baggage tag, you see, and then go on to San Diego and then reclaim his baggage when we arrived at San Diego. However, the other course that we used, and we used to use it quite a bit up until late '53, which for some reason it was changed, however when we were in a big hurry and behind schedule, and had a lot of transcontinental passengers, therefore the people would come right off the transcontinental airplane without going through a gate, and right on to our aircraft, you see, in other words, what we call field transfer, [214] and the baggage would be done the same way, therefore the porter would take the baggage off the transeontinental airplane, and the one throwing down would holler, "San Diego," "Oakland," "San Diego," "Oakland," you see, or "Burbank." Therefore the porter that got all the

(Testimony of Stephen C. Russell.)

San Diego baggage would bring it directly to our aircraft and hand it up to us and we stowed it in the airplane itself.

The Court: He didn't retag it, then?

The Witness: No, didn't have to, because it had a tag on it already from the transcontinental carrier.

The Court: Was that a regular custom, to field-load from one plane to the other?

The Witness: Only when we were in a hurry or behind schedule.

The Court: Was that something that was done infrequently?

The Witness: Yes, sir, I would say so, depending on the situation.

The Court: But the ordinary procedure was for the passenger to disembark, claim his baggage, and go over to the Pacific Southwest and recheck the baggage?

The Witness: Now, there again there arises something else. Because up until late '53 they very seldom claimed their luggage, we advocated they didn't to expedite the transfer, and upon arrival in Burbank, as an example, if we were transferring passengers from our airplane to a [215] transcontinental airplane, we would advise them in our little farewell speech, after thanking them for riding with us, that they would transfer from our airplane to North American, or Skycoach, whoever the other carrier may be, we would know prior to landing, you see, and advise them of that, and not to worry about their luggage, that their luggage would be automatically taken care of.

(Testimony of Stephen C. Russell.)

That was part of our duties.

The Court: That policy was changed, was it?

The Witness: Yes, in the latter part of '53.

The Court: So that the passenger had to pick up his own luggage?

The Witness: Actually we were told it was changed, but I imagine—well, I won't imagine, I won't assume or imagine anything.

The Court: I imagine you can fly, but I am not certain.

The Witness: I will only state what I know, and I know that up until, I would say approximately October or November of '53, that was done constantly. However, after that I had no knowledge as to the exactness.

The Court: That was done constantly—what do you mean by that?

The Witness: What we were talking about.

The Court: Tell me.

The Witness: The transfer of baggage, sir, [216] without the passenger transferring it himself.

The Court: Who would transfer the baggage—the incoming flight?

The Witness: Well, as an example, at Burbank they have what they call a porter pool. The nearest of my recollection and understanding is that it works out of a pool, and whenever an airplane comes in the flight is announced and the porters that aren't working come out and take care of that particular airplane. Now, on our side, Pacific Southwest's side, the porters would hand the baggage up

(Testimony of Stephen C. Russell.)

to the pilots, which were up in the airplane at the time, and they stowed the baggage as they wanted it, you see, in order to expedite unloading, again.

Q. (By Mr. Wright): On northbound flights from San Diego to Burbank, was there any company policy with regard to announcement to the passengers after landing or just before landing, before deplaning?

A. Yes, sir, we made our farewell speech to the passengers and advised them where they could get their luggage, and there, again, up until about November of '53, we used to announce that those that were transferring on to easternbound flights, where they would contact their next—or make their next arrangements to transfer, which would be whatever counter they were supposed to report to.

Q. And you say that that announcement was made according [217] to a company policy?

A. It was made by company request, yes, sir.

Q. Who made the request or gave you the instructions to make that announcement?

A. Mr. Friedkin, Mr. Leonard, Mr. Andrews, Mr. Wood, several, at open pilot meetings.

Q. It was made at open pilot meetings?

A. Yes, sir. As a matter of fact, I got reprimanded for not doing it, so I know very well.

Q. Just answer the questions. Did you at one time also work for an organization known as Airlines Tickets, Inc.?

A. Yes, sir, I did.

Q. Where is that located?

(Testimony of Stephen C. Russell.)

A. Well, I don't know if they are still in existence or not; however, at the time I worked for them I took my schooling at 707 Broadway, here in Los Angeles, South Broadway, I believe, and their office in San Diego was at 1044 Fourth.

Q. When were you working for that organization?

A. In 1950, '51, I believe. Prior to going with Pacific Southwest Airlines.

Mr. Gardiner: Your Honor, it seems to me that employment that far back is so far removed from the issues in this case.

Mr. Wright: I am not going to pursue it any further.

The Court: I haven't any question yet. If the question is too remote you can object to it. [218]

Mr. Wright: I thought that employment was more recent. I am not going to pursue it, Judge.

The Court: All right.

Q. (By Mr. Wright): Have you on any flights on which you were captain been diverted from Burbank, Lockheed Air Terminal, to some other airport in a non-scheduled stop?

A. I don't understand your question, sir.

Q. On any flights that you had which normally would stop at Burbank, have you received orders to divert that flight to some other airport?

A. Yes, sir, I have.

Q. Do you recall any specific occasion when that happened?

The Court: I assume when Burbank is fogged

(Testimony of Stephen C. Russell.)

in, and Burbank does get fogged in sometimes, that they would be diverted to some other airfield. That is true, isn't it?

The Witness: Well, I have a case——

The Court: Burbank does get fogged in, doesn't it?

The Witness: Yes, sir.

The Court: When it is fogged in you can't land and you have to be diverted to some other airfield?

The Witness: However, on one occasion I was diverted by dispatch——

Mr. Gardiner: I would like to move that the witness' answer be stricken as not responsive. [219]

The Court: I would suggest that the witness not volunteer anything and just answer the questions.

Q. (By Mr. Wright): Were there any instances when the flight of which you were captain was diverted for the purpose of meeting the connecting carrier?

A. Not while I was captain, no, sir.

Q. Co-pilot? A. Yes, sir.

Q. Do you recall about when that occurred?

A. The last one that I can remember was December of '52.

Q. Can you tell us what happened?

A. As I recall it, I made a notation in my log book, I usually did when there was anything irregular, and I judged that as irregular, we were sent to Palmdale in preference to Burbank, because we were supposed to meet flights at Palmdale that

(Testimony of Stephen C. Russell.)

prior to that couldn't get into Burbank. However, at our arrival time at Burbank we could have gotten in, the weather had lifted, but these other planes with connecting passengers were at Palmdale, and therefore we had to land at Palmdale to make our transfer.

Q. Did you receive these instructions in flight?

A. In that particular case, yes, sir, by aeronautical radio.

Q. What is aeronautical radio? [220]

A. To the best of my knowledge that is a company radio.

Q. For in-flight communications?

A. Yes, sir.

Mr. Wright: I have no further questions.

Mr. Gardiner: No questions.

The Court: No questions?

Mr. Gardiner: No, your Honor, no cross-examination.

The Court: You may step down.

May the captain be excused?

Mr. Wright: He may

Mr. Gardiner: We will not require him.

The Court: All right; he may be excused.

Mr. Wright: Call Mr. Stout.

JOSEPH W. STOUT, JR.

called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

The Clerk: State your name, please.

The Witness: Joseph W. Stout, Jr.

Direct Examination

By Mr. Wright:

Q. Mr. Stout, you are employed by the plaintiff?

A. Yes. [221]

Q. In what capacity?

A. Air transport examiner.

Q. Briefly, what are your duties?

A. Conduct investigations to determine whether persons engaging in air transportation are complying with the Civil Aeronautics Act.

Q. In the course of your duties did you have occasion in September and October of 1953, to investigate the operations of California Central Airlines?

A. I did.

Q. In the course of that investigation did you visit the Lockheed Air Terminal at Burbank?

A. Yes.

Q. Did you visit the offices of any carriers at Lockheed Air Terminal in Burbank?

A. Yes.

Q. Do you recall whether you visited the offices of North American at Lockheed Air Terminal, Burbank?

A. I did.

Q. When was that?

(Testimony of Joseph W. Stout, Jr.)

A. During October of 1953.

Q. On that occasion did you examine any of the records of North American? A. I did.

Q. And in the course of that examination did you make [222] photostatic copies of some of the records of North American? A. I did.

Mr. Wright: May this document be marked for identification as Plaintiff's Exhibit—

The Court: Is this for Central?

Mr. Wright: Yes.

The Court: That will be 6.

The Clerk: No. 6 for identification.

(The document referred to was marked Plaintiff's Exhibit No. 6, for identification, in case No. 16755.)

Q. (By Mr. Wright): Mr. Stout, will you tell us if there are any particular records of North American's that you examined in the course of your investigation? A. Yes.

Q. What were they?

A. They were the passenger manifests on the North American east-west transcontinental flights, the passenger tickets used on those flights, the transfer manifests from those flights to continuing carriers at Burbank, certain requests for checks in payment for the continuing transportation from Burbank, certain ledger cards, and that is about it.

Q. Did you examine these documents or that particular group of documents for a certain period

(Testimony of Joseph W. Stout, Jr.)

of time? Covering what period did you make the examination? [223]

A. August, September and October, 1953.

Q. Did you make photostatic copies of some of those documents? A. I did.

Q. I show you Plaintiff's Exhibit marked No. 6 for identification, which purports to be photostatic copy of certain documents and ask you whether or not it was made by you? A. It was.

Q. And where was it made?

A. At Lockheed Air Terminal in the office of North American Airlines.

Q. Does it constitute a fair and accurate reproduction of the original documents?

A. It does.

Mr. Wright: I offer Exhibit No. 6 for identification in evidence.

The Court: It may be received in evidence.

The Clerk: Exhibit 6.

(The document, marked Plaintiff's Exhibit 6 for identification, in case No. 16755, was received in evidence.)

Q. (By Mr. Wright): Mr. Stout, I ask you to examine Plaintiff's Exhibit No. 6, and if you can, tell us what the original documents of which that is a photostat consisted of? [224]

A. This document is a transfer manifest listing the passengers who arrived Burbank on North American Airlines flight 600 on October 1, 1953, and were transferred at Burbank to California Central

(Testimony of Joseph W. Stout, Jr.)

flight 534 for continuing transportation to San Diego.

Mr. Ackerson: If your Honor please, I don't like to disrupt this, and I realize this may be slightly out of turn, but I see nothing on that document that says it was transferred to California Central. Maybe they were, but that is the danger of this type of testimony. In other words, letting a witness tell what a document should state. The document doesn't state that as I read it.

The Court: Well, the document is the best evidence of what it contains. Let me see it, please.

There is a notation on the top of it that says, "From Cal. Central."

Mr. Ackerson: That is not the California Central manifest, as I understand it.

The Court: Let's ask the witness. Maybe the witness can read better than I can.

What does it say?

The Witness: It says "From Cal. Central."

The Court: I thought you testified that these were passengers that were transferred to Cal. Central.

The Witness: That is right, they were. [225]

The Court: How do you get "transferred" when it says "From"?

The Witness: I didn't see that written there, but I think I can explain it if you like.

The Court: What is your explanation?

The Witness: This document was examined in the office of North American Airlines, and it was at-

(Testimony of Joseph W. Stout, Jr.)

tached to the various accounting records concerning payment by North American Airlines to California Central for this particular flight. So I would assume, if you want an assumption——

The Court: I don't want you to assume. I want to find out what the facts are.

Did you write this "From Cal. Central" on here?

The Witness: No, sir, that is not mine.

The Court: That is not your writing?

The Witness: No, sir.

The Court: That was on there when you got it from the files of the company?

The Witness: Yes, sir.

The Court: I think the objection is good. The document speaks for itself and it says, "From Cal. Central," and I don't know why the witness should be allowed to testify that these passengers went to Cal. Central. The objection is good. The answer of the witness relative to passengers being transferred to Cal. Central is stricken from the record. [226]

I would suggest to the witness, if the witness is going to testify as to these documents, testify what the documents say, not what the witness thinks they say.

Q. (By Mr. Wright): With further reference, Mr. Stout, to Plaintiff's Exhibit No. 6, and that portion of it which includes a document called an Exchange Order, I believe, can you tell us in the space "From" the initials "BUR" and in the space "TO" the initials "SAN"—can you tell us what the BUR and the SAN stand for?

(Testimony of Joseph W. Stout, Jr.)

A. Those are air line codes. BUR stands for Burbank, and the SAN stands for San Diego.

Q. With further reference to the Exchange Order, and following the letters SAN in the next block appear the letters CCA—can you tell us what they stand for?

A. It is a code used for California Central Airlines.

Mr. Ackerson: If your Honor please, I will object to that as a conclusion. The record speaks for itself. There is no evidence here, your Honor, that we ever heard of this. I am not saying that we didn't, you understand, but this type of testimony is something that is awfully hard to object to as it is insidious.

The Court: They have documents here that use symbols. They don't mean a thing in the world to me. Somebody has got to explain them. That is why I said the other day that if I had to decide this matter upon the affidavits on file [227] I would have to decide against the Government, because I couldn't understand the affidavits, I mean I couldn't understand the exhibits.

Do you know of your own knowledge that those symbols represent California Central Airlines?

The Witness: That is industry knowledge, your Honor.

The Court: All right. The objection is overruled.

Mr. Wright: May this be marked for identification as Plaintiff's Exhibit No. 7?

(Testimony of Joseph W. Stout, Jr.)

The Court: It may be marked as Exhibit No. 7, California Central Airlines Exhibit.

The Clerk: No. 7 for identification.

(The document referred to was marked Plaintiff's Exhibit No. 7, for identification, on case No. 16755-HW.)

Q. (By Mr. Wright): Mr. Stout, I show you Plaintiff's Exhibit marked No. 7 for identification, which purports to be a photostatic copy of a document, and ask you whether or not it was made by you? A. It was.

Q. Where?

A. In the office of North American Airlines at Lockheed Air Terminal.

Q. Is it a fair and accurate representation of the original? [228] A. It is.

Mr. Wright: I offer Plaintiff's Exhibit No. 7, for identification, in evidence.

The Court: It may be received in evidence.

The Clerk: Exhibit 7.

(The document, marked Plaintiff's Exhibit 7, for identification, in case No. 16755-HW, was received in evidence.)

Q. (By Mr. Wright): Mr. Stout, I ask you if you can tell us what Exhibit 7 is?

A. Yes, it is a passenger manifest of North American Airlines flight from New York to Burbank, which departed New York September 30, 1953.

(Testimony of Joseph W. Stout, Jr.)

Q. Do some of the names which appear on Exhibit 7 also appear on Exhibit 6?

A. Yes.

Mr. Ackerson: There, again—I have no objection to him pointing them out as a matter of expedience.

The Court: This calls for a yes or no answer, and the objection is overruled. The answer is, yes.

The Witness: Yes.

The Court: Now you can identify the names.

Q. (By Mr. Wright): Can you identify the names?

A. O-r-t-h, there are two names, Mr. and Mrs. Orth, O-r-t-h. [229]

The Court: May I ask, what does DCA mean?

The Witness: Where is that, your Honor?

The Court: Here (indicating).

The Witness: DCA stands for Washington, D. C. It is the air line code.

The Court: So this on Exhibit 6. "From DCA" means Washington, D. C.?

The Witness: Yes.

The Court: "To SAN" means San Diego?

The Witness: Yes.

The Court: Now, on Exhibit 6 you have here a passenger manifest giving three names. Before you took the picture or photostat of this passenger manifest you placed on it two forms from North American Airlines, one Exchange Order—I don't know what the other form is. How do you know that the two forms that you placed on top of this mani-

(Testimony of Joseph W. Stout, Jr.)

fest before you took the picture applies to the manifest?

The Witness: Well, they were attached to the billing document supporting the payment by North American to California Central for the continuing transportation of these passengers.

The Court: You found these two slips in the files?

The Witness: Yes, sir.

The Court: Of what company?

The Witness: North American Airlines.

The Court: You found the passenger manifest in the [230] files of what company?

The Witness: North American Airlines.

The Court: Did you find in the files of North American any evidence that these three fares were paid by North American?

The Witness: Yes, sir.

The Court: All right, Mr. Wright.

Mr. Ackerson: If your Honor please, I can't see right now where these records, accounting records of North American, have had a sufficient foundation laid to show they have any bearing whatever on Cal. Central. They are hearsay.

The Court: I think the facts in this case are resolving the problem to a rather simple question, and that is if a passenger starts his travel from Washington or New York or Philadelphia, and goes down to a ticket agent and buys a ticket to San Diego and comes west on a carrier that is authorized to carry passengers across State lines, brings the

(Testimony of Joseph W. Stout, Jr.)

passengers to California, the passengers are disembarked and get on a plane that only operates in California, whether or not that passenger is in, as far as the California company is concerned, interstate travel.

Mr. Ackerson: I agree with that. I think that is one of the questions involved.

The Court: That is your problem, and that is the only problem we have here as far as I know. [231]

Assuming, although the evidence may not establish the facts, assuming that an agent in San Diego sells a ticket to New York or Chicago or Philadelphia, or Washington, on United, United starts a trip from Burbank, and assuming that the agent at the same time sells a ticket on Pacific Southwest or California Central lines, from San Diego to Burbank, assuming it is placed in the same envelope and delivered to the passenger, is that in itself enough to bring the local line, the local agency, within the Federal statute regulating air traffic?

It is a very simple question.

Mr. Ackerson: I agree with you.

The Court: I don't know what the answer is, I don't know what the courts have said. I suppose the courts have said something about this matter.

Mr. Ackerson: You will not find it in any of the briefs, your Honor, if they have.

The Court: That is the evidence so far, and all you are doing now is corroborating the testimony of other witnesses. I don't know whether there is going

(Testimony of Joseph W. Stout, Jr.)

to be any denial of the facts that have been presented to the court.

Mr. Wright. That is correct, your Honor, and while I disagree with Mr. Ackerson's statement about whether there is any law in the briefs, or not——

The Court: He didn't say any law; he said what the [232] courts have said, cases. It may be that this is a question of legislation and not a question for the courts, that if Congress wants to place these lines who only travel within the State boundary under Federal regulations, Congress can very easily do so. But it is not for the courts to legislate.

Mr. Wright: That is correct.

The Court: Courts can only interpret the laws already passed by Congress.

Mr. Wright: That is correct.

The Court: Now, whether or not lines that operate exclusively within a State, who pick up passengers after they have been disembarked by a national carrier, whether they come within the Act, I don't know.

I know you say they do. But that is your opinion. That is not conclusive.

Mr. Wright: Perhaps if we can agree on the facts we can just argue the law and end this preliminary hearing.

The Court: This has turned out to be more than a preliminary hearing, because I think you are making your case in chief, because when the time comes to hear the matter upon its merits, I assume that

(Testimony of Joseph W. Stout, Jr.)

you won't be able to produce much more testimony than you have at this hearing, except maybe to accumulate some more testimony.

Mr. Wright: That may be so. [233]

The Court: So if there is an objection, it is overruled.

Mr. Wright: I request that these three documents be marked for identification as Plaintiff's Exhibit 8.

The Clerk: No. 8 for identification.

The Court: 8 for identification.

(The document referred to was marked Plaintiff's Exhibit No. 8, for identification, in case No. 16755-HW.)

The Court: I might say, in furtherance of my remarks a moment ago, there is nothing in the case so far to indicate that either one of the defendants have done anything except to pick up and transport passengers that may be making a trip outside the State of California. That is the only offense they have been guilty of, I assume.

Mr. Wright: That is the issue.

Q. (By Mr. Wright): Mr. Stout, I show you Plaintiff's Exhibit marked No. 8 for identification, which purports to be three sheets of photostatic copies of documents, and ask you whether or not those photostats were made by you?

A. They were.

Q. And where were they made?

(Testimony of Joseph W. Stout, Jr.)

A. In the office of North American Airlines at Lockheed Air Terminal.

Q. Are they fair and accurate representations of the [234] original? A. Yes, sir.

Mr. Wright: I offer Exhibit 8 for identification in evidence.

The Court: It may be received in evidence.

The Clerk: Exhibit 8.

(The document, marked Plaintiff's Exhibit 8, for identification, in case No. 16755-HW, was received in evidence.)

Q. (By Mr. Wright): Now, Mr. Stout, while I have had these exhibits 6, 7 and 8, marked 6, 7 and 8 separately, are you able to state whether or not they constituted one complete set of documents as you found them in the files of North American?

A. Yes, sir.

Q. Exhibit 8, particularly the first sheet thereof, is what?

A. It is a passenger manifest of a North American flight operating from Washington, D. C., to Burbank on September 30, 1953.

Q. Is that a part of the same manifest of which Exhibit 7 is one sheet? A. Yes.

Q. Now, will you tell us what the usual method is in making up a manifest as to how many sheets, rather than just [235] listing the passengers as they come in or alphabetically on one sheet, what is the usual way——

Mr. Ackerson: Just a moment. I take it this

(Testimony of Joseph W. Stout, Jr.)

question, Mr. Wright, relates to general methods?

Mr. Wright: That's right.

The Witness: The required procedure calls for the preparation of a manifest at each station, including the originating, plus the intermediate station where passengers are enplaned or deplaned during the course of a flight progressing from the origin to the destination of the flight, terminal of the flight.

Q. (By Mr. Wright): In other words——

The Court: Just a minute. Assume that you start at Washington and you fix up a manifest, and you go over to Chicago and you lose two passengers, do you fix up a new manifest for the remaining eight?

The Witness: The manifest made would show the through passengers, which would be adjusted to account for the two who had deplaned at Chicago, plus the listing of all passengers boarded at Chicago for that flight.

The Court: Well, do you use your original sheet, your original manifest, or do you have to recopy the eight that are still going on?

The Witness: No, you don't relist the passengers that originated east of Chicago; you show those passengers as [236] through passengers, and then you list only the passengers who board at Chicago.

The Court: That is, you make a new manifest?

The Witness: Yes, sir.

The Court: For the Chicago passengers?

The Witness: Yes, sir.

Q. (By Mr. Wright): Referring to Exhibit 7, which you have already identified as a manifest,

(Testimony of Joseph W. Stout, Jr.)

that shows passengers between what point of origin and what destination?

A. Originating at New York, destined to Burbank.

Q. With reference to Exhibit 6, that manifest lists passengers between what points?

A. This is a transfer manifest.

Q. I beg your pardon. Withdraw the question.

With reference, again, to the first page of Exhibit 8, that lists passengers originating where and destined to what point?

A. In Washington, D. C., destined to various points west of Washington.

Q. With reference to the second page, does that indicate the origination and destination of the passengers listed on the second page of Exhibit 8?

A. Yes, that shows the passengers boarded at Chicago for points west of Chicago.

Q. Do any of the passengers that appear on 7 and 8 also [237] appear on Exhibit 6?

A. No.

Mr. Wright: I request that these two documents be marked for identification as Exhibit 9.

The Court: They may be marked as Plaintiff's Exhibit 9.

The Clerk: 9 for identification.

(The document referred to was marked Plaintiff's Exhibit 9, for identification, in case No. 16755-HW.)

Q. (By Mr. Wright): I show you Plaintiff's Exhibit marked for identification No. 9, which pur-

(Testimony of Joseph W. Stout, Jr.)

ports to be two pages of photostats, and ask you whether or not those photostats were made by you?

A. They were.

Q. Where were they made?

A. They were made in the office of North American Airlines.

Q. Are they fair and accurate representations of the originals? A. They are.

Mr. Wright: I offer Exhibit 9, for identification, in evidence.

The Court: It may be received in evidence.

(The document marked Plaintiff's Exhibit 9, for identification, in case No. 16755-HW, was received in evidence.) [238]

Q. (By Mr. Wright): Now, with reference to Exhibit 9, Mr. Stout, will you state what Exhibit 9 is?

A. The first sheet of Exhibit 9 is the passenger manifests from North American's flight 201, which was prepared—which shows the passengers boarded at Kansas City for points west of Kansas City.

Q. Page 2?

A. Page 2 is a transfer manifest from this flight showing the passengers who were transferred at Burbank for continuing transportation to San Diego.

Q. Now, can you from an examination of Exhibits 6, 7, 8 and 9 state whether the manifests that are in those exhibits pertain to the same flight?

A. Well, 7 pertains to flight 600, and 8 also

(Testimony of Joseph W. Stout, Jr.)

pertains to flight 600, and Exhibit 9 pertains to flight 201.

Q. Two separate flights?

A. That's right, two flights that terminated at Burbank on October 1st.

Q. I didn't catch the last part of your answer. You say two flights that terminated the same day?

A. These documents include passenger manifests of two North American flights which terminated at Burbank on October 1st, 1953; and they also include the transfer manifest from these flights to the continuing carrier at Burbank.

Q. Is Exhibit 6 one of the transfer [239] manifests? A. That's right.

Q. And which exhibit contains the other transfer manifest?

A. Exhibit 9, the second sheet.

Q. Do the transfer manifests indicate whether or not these passengers from these two flights were transferred to a single flight for onward transportation?

A. They both show that the passengers were transferred to a flight of California Central to San Diego.

Mr. Ackerson: Just a moment. Your Honor, I move that be stricken: I don't see where that shows at all. It is a conclusion.

The Court: Will you show me that?

The Witness: Yes, sir.

The Court: Speak up loud so they can hear you.

The Witness: In this document here, Exhibit 9,

(Testimony of Joseph W. Stout, Jr.)

the second sheet, the letters CCA are shown on the transfer manifest, which I previously mentioned as being the code for California Central Airlines. And on this Exhibit 6 this sheet shows here Burbank to San Diego, CCA, California Central Airlines, California.

Mr. Ackerson: And there is a place marked there by North American ?

The Witness: Yes.

Mr. Ackerson: All right. [240]

The Court: The same names on the manifests?

The Witness: No, sir. This includes passengers transferred from flight 201, and then these are three passengers who came from North American flight 600.

The Court: What is the passenger's name?

The Witness: Well, on this one it is Robbins and Mr. and Mrs. Orth, and the other one is Winins and Lane. There are several other names there.

The Court: Objection overruled.

Mr. Ackerson: I will try to expedite this and cease making that type of objection.

Mr. Wright: I request that this exhibit consisting of seven pages be marked as Plaintiff's Exhibit No. 10 for identification.

The Court: It may be marked Plaintiff's Exhibit 10 for identification.

The Clerk: 10.

(The document referred to was marked Plaintiff's Exhibit No. 10, for identification, in case No. 16755-HW.)

(Testimony of Joseph W. Stout, Jr.)

Q. (By Mr. Wright): Mr. Stout, I show you Plaintiff's Exhibit No. 10 for identification, which purports to be seven sheets of photostatic copies of documents and ask you whether or not the photostats were made by you?

A. Yes, sir, they were. [241]

Q. And where were they made?

A. In the office of North American Airlines at Lockheed Air Terminal.

Q. And are they fair and accurate representations of the originals? A. They are.

Mr. Wright: I offer Plaintiff's Exhibit marked No. 10 for identification in evidence.

The Court: It may be received in evidence.

(The document marked Plaintiff's Exhibit 10, for identification, in case No. 16755-HW, was received in evidence.)

Q. (By Mr. Wright): Now, Mr. Stout, with reference to Exhibit 10, and particularly the first page thereof, will you tell us what that document is?

A. The first page is the passenger manifests of the North American Airlines flight 600 originating in New York, September 9, 1953, listing the passengers going from New York to Burbank, plus two passengers going from New York to San Diego.

Q. Can you tell us what page 2 of Exhibit 10 is?

A. Page 2 is a passenger manifest of this same flight listing the passengers who boarded at Dallas

(Testimony of Joseph W. Stout, Jr.)

for transportation to Burbank and San Diego.

Q. With reference to these two pages, is there a code or [242] symbol used to indicate the destination of the passengers?

A. Yes; in the destination column, the "SAN" is a code for San Diego, on both sheets.

Q. Will you tell us what page 3 of Exhibit 10 is?

A. Page 3 is a passenger manifest of North American flight 201 listing passengers transported on this flight from New York to Burbank and San Diego.

Q. Page 4 of Exhibit 10 is what?

A. Page 4 is the manifest, passenger manifest of this same flight 201 listing passengers boarding at Chicago for Oakland and San Diego.

Q. Now, will you tell us what page 5 is?

A. Page 5 is the transfer manifest of passengers from flight 600, previously mentioned, who were transferred at Burbank to another carrier for transportation—continuing transportation to San Diego.

Q. What are the other documents that appear on page 5?

A. They are the passenger coupons of the three passengers—passenger coupons of the tickets of the three passengers who traveled from points east of Burbank to Burbank on North American Airline flight 600 and were transferred at Burbank for continuing transportation to San Diego.

Q. Do those coupons show by air line symbols the origination and destination of the passengers?

(Testimony of Joseph W. Stout, Jr.)

A. They do. [243]

Q. Now, I ask you what the documents that appear on page 6 of Exhibit 10 consist of?

A. This document lists the names of the passengers who were transferred from North American to California Central for continuing transportation to San Diego.

Q. What are the other documents that appear on page 6?

A. Those are the tickets covering the transportation of these passengers from points east of Burbank through to the final destination of San Diego.

Q. What is page 7?

A. 7 is a copy of a request for check supporting the payment of the continuing transportation of the seven passengers to California Central.

Q. Does Exhibit 10, consisting of seven pages, constitute the complete set of documents which you examined in the office of North American in connection with this particular flight? A. Yes.

Q. Did you make photostatic copies of all of the manifests and tickets that you examined in the office of North American? A. No, sir.

Q. Approximately how many photostats did you make of records similar to Exhibit 10? [244]

A. Approximately 50.

Q. In addition to Exhibit 10 there are further sets of similar documents, are there not, made by you in the office of North American, which are exhibits to your affidavit filed in this proceeding?

A. That is correct.

(Testimony of Joseph W. Stout, Jr.)

Q. During the course of your investigation did you have occasion to observe the arrival and departure of any of the flights of North American or California Central? A. I did.

Q. Do you recall whether or not you observed flights of North American on October 1, 1953, at Lockheed Air Terminal?

A. Yes, sir, I observed the arrival of North American's flight 201 and flight 600 on that date.

Q. Will you tell us what you observed?

A. Well, these two flights arrived at Burbank at approximately 10:00 a.m., and the passengers destined to San Diego checked in at the North American Airlines ticket counter upon arrival, and as each passenger checked in the agent on duty at the North American counter, Mr. Wootton, examined the tickets held by these passengers, and for the passengers holding one-way tickets he validated the passenger coupon and instructed the passenger to check at California Central for his flight to San Diego. The passengers who held round-trip tickets, which included a return ticket from [245] San Diego to their destination east of Burbank, were issued Exchange Orders by North American and were instructed to present the Exchange Orders to California Central for the continuing flight to San Diego. And I then observed these passengers check into California Central and the passengers with the North American Exchange Order presented that document to the California Central agent who picked it up and gave them a gate pass, and advised

(Testimony of Joseph W. Stout, Jr.)

them that they would be flying on California Central flight 534 to San Diego.

The passengers who held a passenger receipt of the one-way ticket, surrendered their passenger receipt copy to the California Central agent, and he returned the ticket folder to the passenger with a gate pass for transportation on to San Diego. And I also observed that the baggage was physically transferred from the aircraft of North American over to the aircraft of California Central, and I was also advised——

Q. Just a moment. What do you mean by physically transferred?

A. It was what they call a field transfer. The baggage was not taken into the passenger terminal and claimed by the passenger and rechecked again; the baggage was simply checked through to San Diego from the passenger's origin in the East, and it was transferred from the North American aircraft on over to the California Central plane [246] without having to go through the passenger terminal. I interviewed one of the passengers who had arrived on North American and was continuing on to San Diego. His name was Private Robbins——

Mr. Ackerson: Your Honor, I am going to object to this conversation as hearsay.

The Court: He hasn't given any conversation.

Mr. Ackerson: I will save it, then. Excuse me. I have read his affidavit, your Honor.

The Court: I didn't hear any conversation. He just said he interviewed him.

(Testimony of Joseph W. Stout, Jr.)

Mr. Ackerson: I am sorry.

The Witness: And I asked to examine the tickets of Private Robbins. And the only ticket that he had was a ticket folder of North American Airlines showing his origin at Washington and his destination as San Diego. And the only baggage check held by this passenger was a North American check showing that the bag had been tagged from Washington through to San Diego, and this passenger still held the North American check to claim his baggage upon arrival in San Diego. And he also had a California Central gate pass.

Q. (By Mr. Wright): I believe, if I recall correctly, you said that you observed these passengers checking in with the ticket agent at California Central's counter. Did you observe whether or not they boarded any aircraft thereafter? [247]

A. Yes, shortly afterwards the California Central flight 534 to San Diego was announced, and these passengers, including the Private Robbins that I interviewed, boarded the California Central flight for their continuing transportation to San Diego. It departed about 11:00 a.m.

Q. Did you observe any other similar flights while you were there, during the course of your investigation, not necessarily the same day?

A. Not that I recall.

Q. Have you ever ridden on one of California Central's aircraft? A. I have.

Q. On one or more than one occasion?

(Testimony of Joseph W. Stout, Jr.)

A. It was a round trip from Burbank to San Francisco and return, the same day.

Q. When was that? A. May, 1949.

Q. What was your purpose, if any? Was this in the course of your official duties?

A. It was.

Mr. Ackerson: I might object to the question as a legal conclusion, your Honor.

The Court: What is your purpose is certainly a conclusion.

I notice it is nearly 3:00 o'clock. I think we [248] will take our afternoon recess. We will now recess until 3:00 o'clock.

(Whereupon a recess was taken.)

Q. (By Mr. Wright): Was there a particular reason why you made that trip on California Central? A. Yes.

Q. What was that reason?

A. I was making a survey to determine what amount of traffic California Central was carrying where passengers originated or terminated their trip outside the State of California.

Q. Where did you buy your ticket?

A. Well, I received my ticket at the Lockheed Air Terminal.

Q. At the ticket counter there?

A. Yes.

Q. Whose ticket counter was it?

A. California Central.

(Testimony of Joseph W. Stout, Jr.)

Q. Will you tell us what happened. Describe the circumstances of your purchase of the ticket?

A. Well, the arrangements had been made for me to make this trip, and when I reported to the California Central ticket counter, the California Central employee asked me my address, and I stated it was Washington, D. C., and he said that he couldn't use an out-of-state address, and I [249] said, "Well, I have a local address, I can give the hotel where I have been staying. I have been there several days." And he said that would be all right. So I gave him the Clark Hotel in Los Angeles.

Q. Did you observe at that time other passengers being ticketed? A. I did.

Q. Tell us what you observed with relation to them?

A. Well, at that time California Central had a screening process to restrict out-of-state traffic. The ticket contained information on the reverse side where the passenger certified that his trip had neither originated nor would be terminated at a point outside the State of California. And I signed a similar certification myself.

Q. You signed such a statement?

A. Yes.

The Court: Do you know whether or not that is the present custom?

The Witness: Not according to my observation October 1st. There were no such certifications.

The Court: You say they required you to sign that, and you say you signed it?

(Testimony of Joseph W. Stout, Jr.)

The Witness: Yes. But that was in May of '49.

The Court: Then between '49 and '54 the policy changed?

The Witness: Apparently so, or else the policy is not [250] being effected. I don't know what the present policy is, your Honor.

Q. (By Mr. Wright): Did you say you observed other passengers being ticketed at the time in 1949 of your flight on Cal. Central?

A. Yes.

Q. Did you observe whether or not they signed similar documents to the one you signed?

A. Yes, sir.

Q. Did you arrive in Los Angeles this week?

A. Yes, sir.

Q. On what day?

A. I arrived here Tuesday, that is, the 20th.

Q. By what means did you travel?

A. Through American Airlines Flight 7 from Washington, D. C., to Los Angeles, and arrived at Los Angeles International Airport at 5:40 p.m., July 20th.

Q. Did you have occasion at your arrival to visit the ticket counter of California Central?

A. I did.

Q. And will you tell us what you did?

A. I walked over to the California Central ticket counter to inquire about a flight to San Francisco, and talked to the agent, California Central agent, Mr. Morrison, and told him that I had just arrived from Washington on American's [251] flight

(Testimony of Joseph W. Stout, Jr.)

and might want to go on to San Francisco that night. And he said he had a flight leaving at 7:25 p.m. I asked him to hold seats for Mr. John Chambers and myself, and I would let him know in 15 minutes whether those seats would be used. And he did confirm the space, and I checked back 15 minutes later saying that I would be unable to use the space and to cancel the two seats for Chambers and myself on this 7:25 p.m. departure to San Francisco.

Mr. Wright: I think that is all.

Mr. Ackerson: I only have a couple of questions, your Honor.

Cross-Examination

By Mr. Ackerson:

Q. Mr. Stout, you stated that on this recent trip you observed what they call a field transfer of baggage, I believe, from North American flight, either 901 or 600 to 201 or 600, one of them, directly to a California Central plane? A. That's right.

Q. And you also spoke of flight—the other flight.

A. Yes, sir.

Q. Where the passengers went into their own ticket office and then came over and were cleared through Cal. Central? A. Yes, sir. [252]

Q. Was the field transfer from a plane that was late?

A. These two planes were slightly late. I believe

(Testimony of Joseph W. Stout, Jr.)

the scheduled arrival time was about 9:00 a.m., and he got in about 10:00 a.m.

Q. And which got in the earliest?

A. I couldn't say. They both seemed to arrive about the same time.

Q. In any event the passengers on one plane went in and cleared the regular way, and then you saw a field transfer with respect to the other plane, is that it?

A. No; the baggage—all together there were eight transfer passengers from the two North American flights to California Central, three passengers came from flight 600 and five passengers came from flight 201, and they were all going to California Central's flight 534.

Q. And which flight had the field transfer—the three passengers?

A. I just saw them unloading the baggage and Mr. Wootton told me they were making a field transfer of the baggage over to the California Central aircraft.

Q. Irrespective of what Mr. Wootton told you, Mr. Stout, did you observe that the California Central plane took off almost immediately after the field transfer?

A. I want to correct it if I have made any misrepresentation or it is not clear. I didn't see the complete [253] physical handling of the baggage from the two North planes to the California Central aircraft. I saw them unloading the baggage and Mr. Wootton told me that a field transfer was being

(Testimony of Joseph W. Stout, Jr.)

made, and I also interviewed the one passenger, and he showed me his baggage check, which was a North American tag, which showed that the baggage had not been reclaimed or rechecked at Burbank.

Q. Did Mr. Wootton also tell you that North American, the two North American planes were late, or do you know the schedule and do you know of your own knowledge?

A. Yes, I knew they were a little late.

Q. Did you know what California Central's schedule was for that flight, I mean the time to depart?

A. I didn't know for sure. It departed about 11:00 a.m.

Q. All right. I have only one more question. You spoke of this passenger Robbins.

A. Yes.

Q. That was the man that you were discussing that you said you talked with Robbins, did you?

A. Yes.

Q. Did I understand you correctly to say that no ticket was issued to Robbins by Cal. Central?

A. That is correct, yes, sir.

Q. Didn't you find, as a matter of personal knowledge, [254] either then or later, that California Central had, in fact, issued Robbins a regular California Central ticket?

A. Not to Robbins. California Central made up a ticket for their own records, but that was never seen or given to passenger Robbins or any of the other passengers who made this transfer.

(Testimony of Joseph W. Stout, Jr.)

Q. But you saw Robbins' ticket made out to Robbins, didn't you?

A. I saw a ticket that California Central had made for their own records——

The Court: Just a minute. How do you know that? You are giving some conclusions here. How do you know?

The Witness: I watched him check in, your Honor, and there never was a ticket given to him or any mention made of any California Central ticket.

The Court: Can you testify that there never was at any time out of your presence a ticket given to him?

The Witness: I watched him check in at the counter, and I followed him out to the ramp before he loaded the plane, and I looked at his tickets.

The Court: At no time no ticket had been given to him?

The Witness: That's right.

The Court: But you don't know what happened afterwards?

The Witness: Whether they mailed one to him or not?

The Court: No. While he was on the [255] plane.

The Witness: No, I don't. But I saw the passenger's receipt of that ticket after the plane departed, so I know he never received that passenger receipt at Burbank. It would have had to be mailed to him if he ever got it.

Q. (By Mr. Ackerson): Do you know that the

(Testimony of Joseph W. Stout, Jr.)

practice of California Central usually is to pick up the ticket at the counter from all passengers, practically?

A. Are you speaking of transfer passengers?

The Court: He said all passengers.

Mr. Ackerson: From all passengers, did you know that that was their policy?

The Witness: They picked up the North American——

The Court: No, no, no. Just answer the question. Do you know if that is their policy?

The Witness: No, I don't know if it is.

Q. (By Mr. Ackerson): You don't know that they pick up the tickets from all passengers and merely give them a gate pass to get on the plane?

A. I don't know the policy.

Q. But you did see a ticket made out to Robbins, the man you are talking about? A. Yes.

Q. At the full price? A. Yes, sir.

Q. Including tax? [256] A. Yes, sir.

Mr. Ackerson: That's all.

Mr. Wright: I have no further questions as far as——

The Court: May this witness be excused?

Mr. Ackerson: He may.

Mr. Wright: I beg your pardon, your Honor. As far as California Central is concerned.

The Court: I am sorry.

Mr. Wright: I do have a couple of questions with reference to two exhibits.

(Testimony of Joseph W. Stout, Jr.)

The Court: I should have waited until after you finished your statement.

Redirect Examination

By Mr. Wright:

Q. Mr. Stout, I show you Plaintiff's Exhibits, in case 16754-HW, marked for identification 23 and 24, which purport to be photostatic copies of documents, and ask you whether or not those photostats were made by you? A. They were.

Q. Where were they made?

A. In the office of U. S. Aircoach at Lockheed Air Terminal.

Q. Can you remember about when they were made? A. October 1st, 1953. [257]

Q. Are they fair and accurate representations of the original documents? A. They are.

Mr. Wright: I offer Exhibits 23 and 24, for identification, in evidence.

The Court: They may be received in evidence.

The Clerk: Exhibits 23 and 24.

(The documents referred to were marked Plaintiff's Exhibits 23 and 24, and were received in evidence.)

Mr. Gardiner: If your Honor please, I don't understand the relevancy——

The Court: They may not be relevant. If they are not relevant we will ignore them.

Mr. Gardiner: This is not executed by Pacific Southwest or——

(Testimony of Joseph W. Stout, Jr.)

The Court: He said he found them in the files of the company.

Q. (By Mr. Wright): Mr. Stout, I refer you to Exhibit 24 and ask you to examine it, and after having examined it if you can will you tell us what the documents consist of?

A. Exhibit 24 consists of three documents which are the passenger manifests of a U. S. Aircoach flight from New York to Burbank, departing from East Coast points on September 17, 1953; and also included on these forms are the copies of several tickets used on this flight. [258]

Q. Were these documents which you have just described found by you or furnished you by U. S. Aircoach in their offices?

A. They were.

Q. And do they relate to the same flight?

A. They do.

Q. With reference to page 3 of Exhibit 24 in the lower portion thereof there appears an Exchange Order; was that included in the group of documents which you examined?

A. Yes.

I would like to correct my other testimony to show that page 3 is a transfer manifest of the U. S. Aircoach flight listing the passengers who were transferred at Burbank for continuing transportation to San Diego.

Mr. Wright: I have no further questions.

The Court: May this witness be excused?

Mr. Gardiner: I would like to ask one or two questions with respect to Plaintiff's Exhibit 24 in the Pacific Southwest case

(Testimony of Joseph W. Stout, Jr.)

Does the witness still have that exhibit before him?

The Witness: Yes, sir.

Cross-Examination

By Mr. Gardiner:

Q. On page 1 of Exhibit 24 there are two documents, [259] flight coupons B-19524 and 19523. From your familiarity with the abbreviations and symbols, could you tell me what the initials SC PHL and then a number on the left-hand side indicate?

A. I see. It is Skycoach, Philadelphia.

Q. Right over that phrase I note there is imprinted "Issued in exchange for."

A. Yes, sir.

Q. Would that indicate that this flight coupon depicted on page 1, Exhibit 24, was issued by the carrier in exchange for some document that Skycoach of Philadelphia had issued?

A. Yes, Skycoach of Philadelphia had initially issued an Exchange Order before the passenger began his flight.

Q. Could you tell me how you determine that Skycoach had issued an Exchange Order in exchange for some other document?

A. Because it says, "Issued in exchange for" and then it says, "SC PHL," Skycoach, Philadelphia.

(Testimony of Joseph W. Stout, Jr.)

Q. I repeat my question, how do you determine from that number that it was an exchange order issued by Skycoach, as distinguished from maybe an interline ticket, or——

A. I refer to it as an exchange order because it wasn't a document that was issued for the final transportation. There was another ticket, flight ticket, issued against this [260] initial form that was sold by Skycoach of Philadelphia.

Q. Then, in other words, the passenger who went to Skycoach in Philadelphia received something, an Exchange Order or similar document, which was not suitable for transportation, and exchanged it in return for this flight coupon?

A. I can't testify as to what happened there, but there was, according to this ticket here, an Exchange Order of some preliminary form issued—I call it an Exchange Order—by Skycoach, and there was a U. S. Aircoach ticket reissued against that Exchange Order sold by Skycoach, which provided for the transportation of the passenger from Philadelphia to San Diego.

Q. The document depicted, then, flight coupon, provided for the transportation, and it was issued in exchange for something which Skycoach in Philadelphia had originally issued to the passenger?

A. That's right, according to this document here.

Mr. Gardiner: That is all, your Honor.

Mr. Wright: I have no further questions.

The Court: May this witness be excused?

(Testimony of Joseph W. Stout, Jr.)

Mr. Gardiner: We have no further use of him.

The Court: You may be excused.

Mr. Wright: Call Mr. Jack Wootton. [261]

JACK F. WOOTTON

called as a witness by and on behalf of the plaintiff,
having been first duly sworn, was examined and
testified as follows:

The Clerk: State your name.

The Witness: Jack F. Wootton.

The Clerk: Spell your last name.

The Witness: W-o-o-t-t-o-n.

Direct Examination

By Mr. Wright:

Q. Mr. Wootton, will you state where you are presently employed?

A. North American Airlines, Lockheed Air Terminal in Burbank.

The Court: Will you keep your voice up a little bit? I am satisfied counsel can't hear you.

The Witness: North American Airlines at Lockheed Air Terminal in Burbank.

Q. (By Mr. Wright): In what capacity?

A. Air line ticket agent.

Q. For how long have you been so employed?

A. Since October of 1952.

Q. Are there other personnel that are also employed at the same counter? [262]

(Testimony of Jack F. Wootton.)

A. Yes, sir.

Q. What are the hours of your employment?

A. They vary with the weeks. I work different shifts.

Q. There is more than one shift on the counter?

A. Yes, sir.

Q. And you generally work with one or more other ticket agents on the same shift?

A. It varies with the shift that I am working. On the day shift I work alone; on the night shift with other agents.

Q. Can you tell us generally speaking the hours of the day shift, and the hours of the night shift?

A. At the present time on the day shift I work from 6:00 a.m., till 2:00 p.m. On the night shift from 2:00 until 10:00.

Q. How many flights are handled, either arrivals or departures, by you and whoever else happens to be working on the counter, on the day shift?

A. It varies with the time of the year, equipment available, anywhere from one to three or four.

Q. Are those all arrivals?

A. Not necessarily.

Q. The North American flights that operate east and westbound—I will withdraw that. Isn't it true that the westbound North American flights generally arrive on the day [263] shift?

A. Generally.

Q. And the eastbound flights depart during the night shift?

A. That's right.

Q. Now, will you tell us just what your duties

(Testimony of Jack F. Wootton.)

are in connection with the arrival of the west-bound transcontinental flights?

A. I meet the arriving airplane at the ramp, give the information to the hostess as to what I want the passengers to do, to come to the counter to recheck, and reconfirm their reservations for on space to other places in California, or give them the information directly on the airplane as to what gate and what flight number they will continue on.

Q. And then sometime before the arrival of the flights you receive a notification as to passengers, if any, that require onward transportation to some other point than Burbank?

A. Yes, sir.

Q. How do you receive that notification?

A. By teletype from the last passenger spot.

Q. And that would generally be what—either Kansas City or Chicago?

A. At the present time Chicago or Dallas.

Q. When you receive that notification by teletype, for [264] instance, that a certain number of passengers require onward transportation to San Diego, what do you do?

A. I call our operations manager and advise him the number of aircraft coming in, the number of passengers requiring on space; he, in turn, advises me what aircraft will carry them, that is, our own aircraft; if we don't have equipment available, to secure space on other carriers.

Q. When you don't have your own equipment available, do you secure or attempt to secure space on other carriers for the passengers?

(Testimony of Jack F. Wootton.)

A. Yes, sir.

Q. What carriers do you attempt to secure space on? A. The first available.

Q. Does that include United and Western?

A. Yes, sir.

Q. Also California Central? A. Yes, sir.

Q. Pacific Southwest? A. Yes, sir.

Q. If you succeed in confirming the onward transportation on a carrier, how is the payment of the fare on that other carrier arranged for or taken care of?

A. That is an accounting problem. I couldn't tell you.

Q. You do secure space on flights from Burbank to San Diego for these passengers? [265]

A. On occasion, yes.

Q. And occasionally if the equipment isn't available, from Burbank to San Francisco or Oakland?

A. Yes, sir.

Q. When you do secure that space occasionally, you do not see to the payment of the fares?

A. No, sir.

Q. Do you furnish the carrier who confirms the space to you with some documentation or some means whereby the carrier can get paid?

A. It varies with the condition. I can give them a list of names of the passengers which, in turn, could be furnished for billing, or I can issue the passenger himself a flight coupon, a flight ticket.

Q. Do you have at your counter the tickets of Pacific Southwest? A. Yes, sir.

(Testimony of Jack F. Wootton.)

Q. And have you always had those available at your counter?

A. Unless we accidentally run out.

Q. Do you have the tickets of California Central?

A. Yes, sir.

Q. So that you—if you had secured onward transportation from either one of those carriers you could either furnish them just a list of names or issue to your incoming passenger [266] one of their tickets?

A. That's right.

Q. Are these California Central and Pacific Southwest Airways tickets charged to you personally?

A. No.

Q. You are not accountable for them personally?

A. Well, I shouldn't say no. I sign for the receipt of them. If I happen to be working the shift at the time that they are delivered to the counter.

Q. Do you also on occasion issue Exchange Orders?

A. Which ones—North American Exchange Orders?

Q. Yes.

A. Yes, I do.

Q. I show you Plaintiff's Exhibit No. 6 in 16755-HW, and ask you whether or not the document on which is printed Exchange Order is the form which you sometimes utilize?

A. Yes, it is.

Q. Does this particular one happen to be one that was issued by you?

A. Yes, sir, it is.

Q. And your signature appears thereon?

A. On the bottom.

(Testimony of Jack F. Wootton.)

Q. Did you also make the other entries that appear on that Exchange Order?

A. Everything that isn't printed on the Exchange Order [267] is written in by the agent.

Q. I ask you whether or not you also prepared the passenger manifest, which is part of the same Exhibit No. 6?

A. I couldn't be certain, but it looks like my writing.

Q. The name of the persons to whom you issued the Exchange Orders also appear on the manifest, isn't that correct?

A. Yes, it does.

Q. When you issue these passengers Pacific Southwest or California Central tickets for their onward transportation, do you have to account for those tickets on a sales report of some kind?

A. Yes, I do.

Q. Is that a daily sales report?

A. That is a separate report from the daily sales report. It is a special form made up for passengers who travel on other carriers.

Q. Are those tickets issued directly to the passengers or—when you do issue these tickets are they issued directly to the passengers, or do you turn the tickets over to either California Central or Pacific Southwest ticket counter at Lockheed Air Terminal?

A. In most cases they would be issued directly to the passengers.

Q. Do you collect an additional fare from the passenger? [268]

A. No, I don't.

(Testimony of Jack F. Wootton.)

Q. The cost of that, as far as you know, then, is paid—well, it is paid by someone other than the passenger?

Mr. Ackerson: If the witness knows, your Honor. I object to it as calling for a conclusion.

Mr. Wright: If he knows.

The Court: Do you know who it is paid by?

The Witness: No, I don't.

Q. (By Mr. Wright): What entries do you make on your report when you issue tickets in this manner, and do not collect the fares?

A. I list the ticket number, the name of the passenger, and their destination.

Q. Are you familiar with the request for check form which appears as page 7 of Exhibit 10?

A. No, I am afraid I am not.

Q. Will you read this particular one?

Mr. Gardiner: Might I inquire which case that exhibit is in, your Honor?

Mr. Wright: Exhibit 10. I believe it is California Central.

Q. (By Mr. Wright): That refers, apparently, to fares to cover the transportation of persons from Burbank to San Diego, does it not?

A. It would indicate that. [269]

Mr. Ackerson: Did the witness state that he knew what it was, he was familiar with the document?

The Witness: I have never seen what it is.

The Court: He says he wasn't familiar with it.

(Testimony of Jack F. Wootton.)

You are asking him to interpret something that he doesn't know anything about.

Mr. Ackerson: I would move that the last answer be stricken, your Honor.

The Court: It may go out.

Q. (By Mr. Wright): On occasions when you secure space for onward traveling passengers on California Central or Pacific Southwest, are you ever presented at that time by an invoice or a billing of any kind from either one of those carriers, at the time of the arrangement for the onward transportation?

A. This is for passengers who have arrived on my flight?

Q. Who have arrived or are arriving.

A. No, I never have.

Q. So, as you have already stated, you are not familiar with the accounting or the bookkeeping?

A. No, sir.

Q. But on these reports that you make out you account for all the tickets that have been issued by you?

A. Yes, sir. [270]

Q. And that goes to the accounting office?

A. Yes, sir.

Mr. Wright: I have no further questions.

(Testimony of Jack F. Wootton.)

Cross-Examination

By Mr. Gardiner:

Q. Mr. Wootton, will you give the full name of your employer? A. North American Airlines.

Q. Could you tell the type of business? Is that a ticket agency? A. I couldn't say.

Q. You are not familiar with the corporate organization? A. No, sir.

Q. You mentioned the shift hours, and they seem to indicate that from 10:00 p.m. to 6 a.m., the office is closed, is that correct?

A. Yes, sir.

Q. When do you receive this teletype message to which you referred from an eastern city? I think you said Dallas or Chicago, indicating the number of passengers on one of the flights that is due to arrive that morning?

A. It varies with the flight itself, the operating time. The Chicago flight, we receive the dispatch approximately [271] 9:00 p.m. every evening; the Dallas dispatch comes in unattended during the early morning.

Q. That is a dispatch for which flight, the one arriving in the evening or morning?

A. They both arrive in the morning. They leave Chicago approximately 9:00 o'clock, 9:00 p.m., our time.

Q. And when do you get the dispatch?

A. Immediately after they leave.

(Testimony of Jack F. Wootton.)

Q. When those passengers come in, and some of them wish to continue to other cities, you transport them on your own equipment, I believe you stated?

A. Yes, sir.

Q. And do you have your own equipment or the equipment of carriers whose tickets you sell going to Oakland? Do you?

A. Would you repeat that?

Q. Do the carriers whose tickets you sell in this State operate shuttle flights or any type of flights from Burbank to Oakland?

A. Yes, they do.

Q. And do they operate flights from Burbank to San Diego?

A. Yes, sir.

Q. And approximately how many flights a day do you operate in that manner to Oakland?

A. Ordinarily one to Oakland. [272]

Q. And what equipment is that?

A. It varies with the passenger load. Anything from a DC-3 to a DC-4.

Q. What is the passenger capacity of a DC-4 that is used for that type of work?

A. 80 passengers.

Q. What type of equipment is used for the southbound on the shuttle service?

A. Ordinarily a DC-3.

Q. And that is what—28 seats?

A. 28 seats; yes, sir.

Q. Do those planes carry passengers when they return north?

A. Yes, they do.

Q. And consequently from the south?

A. Yes.

(Testimony of Jack F. Wootton.)

Q. And when you have too many passengers, an excess load for the northbound plane—withdraw that.

You testified that when you do not have equipment available, when you have more passengers than you have equipment for, you contact other carriers. How often does that situation occur, how often do you have to contact other carriers to take passengers to San Diego or Oakland?

A. At the present time, it is very seldom.

Q. Upon those flights, do you also, upon occasion, [273] transport from Burbank to either San Diego or Oakland, passengers from other large irregular carriers who may have been off-loaded at Burbank?

A. Yes, sir, we do.

Q. And upon occasion when you do not have equipment, are you able to divert your own incoming passengers from the East Coast cities to any such flights of other large irregular carriers in this State?

A. Yes, sir.

Q. What carrier does your line use for the southbound transportation of passengers who may eventually, or who may go out of the State on one of your eastbound flights?

A. From what point?

Q. Well, what points do you offer service from in northern California?

A. From Oakland.

Q. What carriers do you utilize from there when you do not have one of your own equipment up there?

(Testimony of Jack F. Wootton.)

A. Well, it would be the first available or anything interlocking with our own schedule.

Q. Are you familiar with the carriers which serve Oakland? A. Yes, sir.

Q. Could you name them?

A. The largest irregular carrier would be the Currey [274] Air Transport, Great Lakes; the regular carriers would be United, Western, California Central, Pacific Southwest.

Q. With respect to that last question, your answer to my last question, have you been utilizing Pacific Southwest since April 1st of this year for transportation southward from Oakland?

A. Well, since I work about half of the time on the evening shift when I would know of that, I would say no, they haven't been. Except possibly once or twice in that time that I know of.

Q. Do you know whether the Pacific Southwest Airline tickets in the possession of North American Airlines at Burbank have been paid for by the company when they are received, or whether they are paid for afterwards? Do you know the facts on that situation?

A. I couldn't say definitely. It would be hearsay.

The Court: If you don't know, just say you don't know, and don't speculate.

Mr. Gardiner: I have no further questions.

Mr. Ackerson: I have just a few, your Honor.

(Testimony of Jack F. Wootton.)

Cross-Examination

By Mr. Ackerson:

Q. Mr. Wootton, do you know of a ticket agency named Republic Air Coach Agency? [275]

A. I have heard of it.

Q. Do you know who it is?

A. Not exactly, no.

Q. Do you know whether or not you get this particular stock of California Central from Republic Air Coach Agency or from California Central direct?

A. It seems, as I recall, the form I sign for custody of the stock is a Republic form.

Q. I think that is correct, Mr. Wootton. Do you know or have you any knowledge as to whether or not Republic Air Coach Agency buys those tickets for cash like you would apples in a bag in a grocery store?

A. No, sir, I don't.

Q. If I came to your window, Mr. Wootton, and wanted to buy a ticket on California Central lines from your office to San Francisco, would you sell it to me?

A. After securing space, yes, sir.

Q. But you would sell local California Central tickets to anybody you could get space for, wouldn't you?

A. Yes, sir.

Q. And you do sell them, I assume?

A. Yes, sir.

Q. Mr. Wootton, I think you answered this

(Testimony of Jack F. Wootton.)

question based upon lack of knowledge. I am going to ask it again, anyway. You stated that you do not know whether you work for [276] a ticket agency or an air line, or both; is that the situation?

A. I am not completely sure of the setup.

Q. But you know you sell tickets for other companies, as well as your own company, your own irregular carrier?

A. Yes, sir.

Q. And you sell tickets generally, I assume, for any number of carriers with which North American has no affiliation?

A. Yes, sir.

Mr. Ackerson: That is all.

The Court: Any further questions?

Mr. Wright: I have no further questions.

The Court: May this witness be excused?

Gentlemen, I notice it is nearly 4:00 o'clock. How many more witnesses do you have?

Mr. Wright: One, your Honor.

The Court: Well, you set this down for an order to show cause on a law and motion day. I didn't assume that it would take more than a couple of hours to dispose of it. Yesterday you all assured me that we could finish today. Now we come down to the end of the day and the plaintiff hasn't finished its case, and I suppose the defendants should have some time to present whatever evidence they have. Unfortunately, next [277] week I am going to start a motion picture case, and I don't know whether I can give you any more time. If you wanted this matter disposed of you could have presented the

evidence in less than two days, because a lot of the evidence that we have is only cumulative.

Mr. Wright: To a certain degree.

The Court: And you established the pattern in the first two or three witnesses.

You set forth the problem in your memorandum of points and authorities. There is no big problem in this case, I don't think. You set forth the problem in a very few words. However, you don't establish your problem in a few words, by any means, but you take a whole lot more time to establish the problem than in setting it forth.

You say on page 2 of your memorandum of points and authorities:

"The defendant has regularly and persistently transported persons as a common carrier for compensation and hire between various cities in the State of California, when such transportation involved the commencement or termination of an interstate journey, * * *."

That is the whole issue here. That is the only thing you complain about.

Mr. Wright: That's right. [278]

The Court: It is a very simple problem.

I doubt very much if the defendants will deny that they have done that. They may deny that it has been a regular and persistent transportation of persons. But if it has just been one, that is all that is necessary to establish a violation, and I think you are trying to establish a violation here.

Now, what is going to be our procedure? What

are we going to do? You are a long ways from home.

Mr. Wright: That is correct, Judge.

The Court: You may want to fly back on one of these lines.

Mr. Wright: I recall the Court said on Monday that it was going to be tied up next week.

The Court: Not only that, but as Mr. Ackerson knows, I am engaged in a series of motion picture cases, and every one of these plaintiffs are clamoring for a trial.

Mr. Ackerson has one and he is very much disappointed that we haven't tried his case. I don't know when we are going to get to his case, but next week is the last week I have before vacation, this court is going to be dark in August, and we are going to start a case next week and that case is going to pick up the first week in September, and we are going to go until we complete it; and when we complete that case we are immediately going to start another, and I [279] probably have two years' work here on motion picture cases. This case has been sixteen years in developing, and I don't think a couple of years is going to hurt, anyway. What are we going to do about this case?

Mr. Wright: It hasn't been sixteen years. The first action of this type was brought in 1940. I didn't mention it in the brief, because it is not reported in the books.

The Court: May I ask you this? Is this the first attempt to bring these intrastate carriers within the

Act, or is this only one of a number of cases that have been filed in various states?

Mr. Wright: There was one filed, as I mentioned, in 1940, against what was then Canadian-Colonial Airways, a certificated carrier authorized to operate between Montreal and New York, and it started an intrastate operation, Buffalo, Rochester, Albany, Syracuse, and New York, and an investigation showed that they were picking up a lot of their traffic from interstate travelers, including some of the people that they were bringing down from Montreal, and the Board started an injunction action on September 16, 1940. However, it is not reported in the books. It was in the Southern District of New York, 10-381, but it wound up with a consent decree, which was ended in December of 1940, and that is the reason it never got in the published reports.

The Court: Well, I can give you Monday afternoon, but [280] is Monday afternoon going to do any good? You haven't rested your case yet. I don't know. The defendants are certainly entitled to more than a half day to present their case.

Mr. Wright: The only witness that I have left, your Honor, is Mr. Rickey here, our investigator. He has his affidavit on file, but he spent money to buy tickets to ride on these air lines, and I hate not to have an opportunity to use him. But that would be about all his testimony would be, the fact that he made these flights on both defendants.

The Court: I am sort of impressed with the opinion of the court in Warner Bros. v. Gittone,

which is 110 F. 2d, 292. The court in that case said:

“* * * the effect of the preliminary injunction which the court granted was not to preserve the status quo but rather to alter the prior status of the parties fundamentally. Such an alteration may be directed only after final hearing, the office of a preliminary injunction being, as we have pointed out, merely to preserve pendente lite the last actual non-contested status which preceded the pending controversy.”

Now, as a general rule we grant a preliminary restraining order, preliminary injunction, to maintain the status quo until the court can determine what the real issues are. That [281] is the usual case. Very infrequently will we grant a restraining order directing people to change their present condition. They have been doing this, and you don't want me to maintain the status quo, you want me to change the status quo.

Mr. Wright: That is correct, your Honor. I don't think that case is pertinent where there is a question of a violation involved.

The Court: I don't know if there is a violation involved. I know that the Government claims there is a violation. The defendant claims there is no violation. And until I can determine there has been a violation, do I have any right to change the status quo?

Mr. Wright: I think so, your Honor. And one reason why I was a little bit more extensive in my testimony than I probably needed to be was because I got the impression from something the court said

the other day that you might consider it, in view of the motions for judgment on the pleadings, you might consider it, and you have the power to consider it as a motion for summary judgment.

The Court: We haven't had a hearing upon an order to show cause, we have had a full-blown hearing upon the merits of this case. If you tried the case tomorrow upon the merits, you would have to bring in the same witnesses and produce the same testimony. [282]

Mr. Wright: That is correct.

The Court: So what we have really been having is a trial.

Mr. Wright: That is correct, your Honor.

The Court: I am in the position to give you Monday afternoon, but after Monday afternoon I don't know what I am going to do with you.

Mr. Wright: Monday afternoon is agreeable to the plaintiff, and I assure the Court and counsel—I might even consider not using Mr. Rickey, but I wouldn't want to be criticized for spending the Government's money for evidence which I didn't use. But if I do use him it will be very brief.

The Court: If you get criticized you can blame it on the judge. That is always a good out.

Well, it is 4:00 o'clock. I like to quit at 4:00 o'clock, particularly on Friday afternoon, as I have personnel who, after court is in recess, must take care of their usual chores, so we will recess this case until 2:00 o'clock Monday afternoon.

Mr. Gardiner: Your Honor, may I inquire whether the court feels there has been sufficient

facts developed at this stage, or possibly with Mr. Rickey's testimony, to warrant and justify the argument of the motion for judgment on the pleadings and any other motion which might be made on Monday [283] afternoon?

The Court: I can't grant a motion for judgment on the pleadings if there is one fact that has to be determined. There are a lot of facts that have to be determined in this case. We have had this hearing to determine the facts, ascertain the facts. I don't think that a judgment on the pleadings would lie at this time.

I don't know what motion you can make at the end of the plaintiff's case, because this is only, primarily, a motion for a temporary restraining order.

Mr. Gardiner: One of the defendant Pacific Southwest's affirmative defenses is, "The complaint herein fails to state a claim upon which relief can be granted."

It occurred to me that it might be possible to argue a motion for dismissal upon that basis. We contend that there is a substantial legal question here that the plaintiff's proceedings are without statutory or judicial authority, and that if we could proceed upon an argument on that basis——

The Court: Supposing you just keep your argument on ice until after the plaintiff finishes its case, and then at that time—if we do stipulate that this could be considered as a trial upon the merits, rather than a hearing upon a motion for a temporary restraining order, then your motion, I think, would be in good place. You might do some home-

work during the week end and ascertain what your procedure might [284] be when the plaintiff finishes the presentation of his case.

Mr. Gardiner: Thank you.

The Court: Of course I don't know what the other witness may testify to. I assume that it will only be cumulative. But I can't assume that. He may produce some facts that are not before the Court at the present time.

We will continue this case to 2:00 o'clock Monday afternoon. Court will stand at recess until 10:00 o'clock Monday morning.

(Whereupon, at 4:00 o'clock p.m., an adjournment was taken until Monday, July 26, 1954, at 2:00 o'clock p.m.) [285]

Tuesday, July 26, 1954, 2:00 o'Clock

The Clerk: No. 16,754-HW Civil, Civil Aeronautics Board vs. Friedkin Aeronautics, Inc., doing business as Pacific Southwest Airlines and No. 16,755-HW Civil, Civil Aeronautics Board vs. California Central Airlines, Inc.

Mr. Wright: Ready, your Honor.

Mr. Gardiner: Ready.

The Court: You may proceed.

Mr. Wright: I will call Mr. Rickey.

ROBERT F. RICKEY

called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

The Clerk: Will you be seated and state your name, please?

The Witness: Robert F. Rickey.

Direct Examination

By Mr. Wright:

Q. Mr. Rickey, are you employed by the plaintiff? A. That is correct.

Q. In what capacity?

A. As an air transport examiner in the office of compliance. [288]

Q. Have you ever had an occasion to ride on the flight of the defendant Pacific Southwest?

A. Yes, I did.

Q. When was that?

A. That was on December 17, 1953.

Mr. Wright: May this be marked for identification?

The Court: It may be marked for identification. In which case is this?

Mr. Wright: In 16,754, Pacific Southwest.

The Court: Plaintiff's Exhibit next in order.

The Clerk: Plaintiff's Exhibit 25.

(The document referred to was marked as Plaintiff's Exhibit No. 25 for identification.)

The Court: And 26?

(Testimony of Robert F. Rickey.)

Mr. Wright: I think they can be marked as one exhibit, your Honor.

The Court: 25 for identification only then.

Q. (By Mr. Wright): Will you tell us between what points you were carried by Pacific Southwest?

A. Between San Diego and Burbank, California.

Q. Prior to December 17, did you make a reservation or attempt to procure passage on the Pacific Southwest?

A. Yes. I requested a reservation from San Diego to Chicago.

Q. To whom did you make that request? [289]

A. That request was made of Mr. Frank S. Ambler, who represented Transocean Airlines in San Diego at that time.

Q. Were you able to make a reservation?

A. Yes.

Q. And thereafter did you purchase a ticket?

A. Yes. Mr. Ambler sold me a ticket.

Q. On what day was that?

A. The purchase was made on December 17, the morning of the day on which I made the flight.

Q. I show you Plaintiff's Exhibit No. 25 for identification, which consists of two sheets, which are photostats of purported tickets, and ask you whether or not the originals of those were ever in your possession?

A. Yes, they were.

Q. From whom did you receive them?

A. This ticket jacket containing the two tickets was obtained from Mr. Ambler.

(Testimony of Robert F. Rickey.)

Q. You are referring to the first page of Exhibit 25 for identification?

A. Yes, that is correct.

Q. And what use did you make of the tickets which you procured from Mr. Ambler?

A. I used these tickets to obtain passage from San Diego to Burbank, and then from Burbank to Chicago, Illinois.

Mr. Wright: I offer Exhibit 25 in [290] evidence.

Mr. Gardiner: If the Court please, I should like to object to the introduction of this exhibit on the grounds stated at the outset of this hearing last week. Page 1 of this exhibit shows some tickets which are superimposed on each other. The terms and tariff conditions and other conditions of which we are not aware are accordingly obscured by the Pacific Southwest Airlines ticket. The exhibit apparently does not constitute a correct representation of what it purports to be.

The Court: Overruled. It may be received as Exhibit No. 25.

The Clerk: Plaintiff's Exhibit 25.

(The document referred to was received in evidence and marked as Plaintiff's Exhibit No. 25.)

Q. (By Mr. Wright): Referring now, Mr. Rickey, to Exhibit 25, and particularly the first page thereof, does that contain one or more than one ticket?

(Testimony of Robert F. Rickey.)

A. That is made up of two tickets.

Q. And both of these tickets were received by you, were they not, from Mr. Ambler?

A. Yes. They were received at the same time. The one was stapled inside the jacket of the other ticket.

Q. In the same manner as it appears in the first page of Exhibit 25? A. That is correct.

Q. What does the second page of Exhibit 25 consist of? [291]

A. The second page is a photostatic copy of the reverse side of the Pacific Southwest ticket, which appears on the first page of Exhibit 25 stapled inside the folder of the Sky Coach ticket.

The Court: Where did you say you got this ticket?

The Witness: From Mr. Frank Ambler, sir, in San Diego, and he represented Transocean Airlines at that time.

The Court: Is he a ticket agent?

The Witness: Yes. He did sell on other carriers.

The Court: He was not an employee of Pacific Southwest except in the sense of selling tickets for Pacific Southwest?

The Witness: No, sir. My understanding is he was merely an agent representing Pacific Southwest, California Central, and several other carriers, for the sale of tickets, that is correct.

Q. (By Mr. Wright): After you received the tickets from Mr. Ambler, will you tell us what you did that day?

(Testimony of Robert F. Rickey.)

A. Yes. When I received the tickets from Mr. Ambler and paid cash for them, he advised me that the Pacific Southwest space had not been definitely confirmed for that evening, but that he would phone me at my hotel as soon as it was, the space was definitely confirmed. Later that morning, around noon, he called and said that the space had been cleared for me on Pacific Southwest Flight 715 for that evening. He advised me to check in at the ticket counter of Southwest, Pacific [292] Southwest Airlines at Lindbergh Field no later than 6:45 that evening.

I went out to Lindbergh Field that evening and checked in for this flight and presented the ticket just as it appears in this exhibit, with the Pacific Southwest Airlines ticket stapled inside the Sky Coach folder.

Q. To whom did you present the ticket in that manner?

A. It was presented to the ticket agent at the Pacific Southwest Airlines ticket office at Lindbergh Field.

Q. What happened after that?

A. I mentioned to the ticket agent, or I asked him about the imprinting on the reverse side of the Pacific Southwest, stating that the airline reserved the right to refuse passage to any passenger going outside of the state, and he told me at that time that I would not have to be concerned about that, that it was an entirely different deal, is the way he ex-

(Testimony of Robert F. Rickey.)

pressed it, and that this was an old ticket form which they were not using much any more.

Q. Thereafter did you board Pacific Southwest aircraft? A. Yes, I did.

Q. At the time you boarded the aircraft, did you still have both the tickets which appear on the first page of Exhibit 25? A. Yes.

Q. Did there come a time when someone picked up the [293] tickets or a part of the ticket?

A. Yes. The hostess aboard the Pacific Southwest Airline flight removed the flight ticket portion of the PSA ticket after the flight had left the ground at San Diego.

Q. Did you have any conversation with the stewardess?

A. Yes. On the ground before we left the gate, she was checking coats, passengers' coats, and she asked me how far I was going, and I told her I was destined to Chicago. She said at that time that she would check my coat as far as Burbank, and I would change planes in Burbank and get a flight to go on to Chicago.

Q. What happened after you arrived at Burbank?

A. Upon arrival in Burbank, I went around in front of the Terminal Building and claimed my luggage. Both Mr. Ambler and the ticket agent at the PSA counter in San Diego had told me that that would be necessary, that I obtain my baggage from in front of the Lockheed Air Terminal and then recheck it at the Skycoach counter upon arrival in Burbank.

(Testimony of Robert F. Rickey.)

So I claimed the luggage and presented it at the Sky Coach counter to be checked on to Chicago.

Q. Did you travel to Chicago by means of another aircraft? A. Yes, I did.

Q. The same evening? A. Yes. [294]

The Court: On that ticket?

The Witness: Yes, sir. On the Sky Coach ticket portion of this Exhibit 25.

Mr. Wright: That's all the questions I have of this witness regarding the PSA flight. I have some tickets on the flight of California Central.

Mr. Gardiner: I have one or two questions.

The Court: All right.

Cross-Examination

By Mr. Gardiner:

Q. Do you know the name of the Pacific Southwest Airlines ticket agent in San Diego whom you encountered when you checked in?

A. No, I do not.

Q. You didn't ask his name as did the witness Chambers in the incident to which he testified about? A. No, I did not get his name.

Mr. Gardiner: That's all, your Honor.

Further Direct Examination

By Mr. Wright:

Q. Now, Mr. Rickey, I ask you whether or not you have ever ridden on a flight of California Central Airlines? A. Yes. [295]

Q. And when was that?

(Testimony of Robert F. Rickey.)

A. That was March 9, 1954.

Q. And from where to where did you ride?

A. That trip was made between Los Angeles and San Francisco. Actually, the flight departed from Burbank, because of weather below limit at Los Angeles International Airport.

Q. Was that trip from Los Angeles to San Francisco the only flight you made that day?

A. No. I had just previously arrived on Western Airlines Flight 31 from Las Vegas, Nevada.

Q. At Los Angeles International Airport?

A. Yes.

Q. On arrival at Los Angeles International Airport, what did you do?

A. I went to the California Central Airlines ticket counter where I talked with an agent by the name of Edward Winslow. I inquired about the ship to San Francisco, the time of departure of the next flight, and he advised me that the next flight left at 7:25 p.m. for San Francisco.

In talking with agent Winslow, I mentioned at least twice that I had arrived from Las Vegas, Nevada, on Western Airlines.

Q. Did you make a reservation?

A. Yes. He made the reservation for me and sold the [296] ticket.

Q. I believe you previously testified that the plane did not leave from Los Angeles International Airport?

A. That is correct. It was scheduled to leave from there, but the weather went below limits be-

(Testimony of Robert F. Rickey.)

fore the flight departed, so they transferred the passengers from International Airport to Lockheed Air Terminal, Burbank, by taxi, and the passengers took the flight from there.

Q. And what time did you arrive in San Francisco?

A. About 10 minutes after 10:00 that same evening.

Mr. Wright: May this be marked for identification as one exhibit?

The Court: It may be marked Plaintiff's Exhibit 11 for identification.

The Clerk: 11 for identification. This is in 16,755.

(The document referred to was marked as Plaintiff's Exhibit No. 11 for identification.)

Q. (By Mr. Wright): Mr. Rickey, I show you Plaintiff's Exhibit marked No. 11 for identification, which consists of two sheets purporting to be photostatic copies of a ticket envelope and a ticket stub, and ask you whether or not that was previously in your possession? A. Yes, it was.

Q. From whom did you receive it?

A. This was obtained from Agent Winslow at the [297] California Central Airlines ticket counter.

Q. Was that presented to you by the ticket agent at California Central Airlines, the ticket agent?

A. Yes. When the ticket was sold to me, Agent Winslow removed the flight coupon portion of the ticket at that time, and the only portion I received

(Testimony of Robert F. Rickey.)

was the folder with the passenger receipt portion of the ticket in it, as Exhibit 11 shows.

Mr. Wright: I offer Exhibit No. 11 for identification in evidence.

The Court: It may be received in evidence.

The Clerk: Exhibit 11.

(The document referred to was received in evidence and marked as Plaintiff's Exhibit No. 11.)

Q. (By Mr. Wright): Now, Mr. Rickey, referring to the second page of Exhibit No. 11, and particularly that portion which appears right beneath the candy stripe, will you tell us what that represents?

A. Yes. That is the passenger receipt portion of the ticket which was sold me by Agent Winslow.

Q. And what happened to the balance or the flight coupon?

A. That was picked up by Agent Winslow when he sold the ticket to me.

Mr. Wright: I have no further questions. [298]

The Court: Any questions?

Mr. Ackerson: I have no questions, your Honor.

The Court: You may step down.

(Witness excused.)

Mr. Wright: The plaintiff has no further evidence to offer at the preliminary hearing, your Honor.

The Court: Before you present any testimony, if you want to present any testimony relative to the issue before the court, the government has stated the case, I think, very clearly. The defendant has regularly and persistently transported persons as a common carrier for compensation and hire between various cities in the State of California when such transportation involved the commencement or termination of an interstate journey.

We have testimony before us from the various witnesses that I think definitely establishes that the defendants transported passengers when the transportation involved the commencement or termination of an interstate journey.

If you have got any testimony to the effect that the witnesses who testified didn't testify correctly, that might be a point.

Mr. Ackerson: I don't think there is any doubt but what we have transported such passengers, your Honor. Of course, we maintain that it is a de minimis proposition, which it is, but [299] I don't think that is particularly pertinent, either.

The Court: Of course, the government asks for a restraining order, a broad restraining order based on the section. If I grant a restraining order, I am going to grant a specific restraining order, not a broad restraining order, specifically restraining them from transporting passengers which involves the commencement or termination of an interstate journey.

Now, I don't know how you are going to enforce it, because unless the passengers will tell the trans-

portation companies that they have just come in from New York or Chicago or from the Hawaiian Islands, and want to go on to San Diego, I don't know how they are going to know it. Or if somebody down in San Diego wants to go to Chicago and buys a ticket to come to Los Angeles, and then buys another ticket up here, I don't know how in the world you are going to enforce such a restraining order. I am not satisfied in my own mind yet that the regulation in question even prohibits the things set forth by the government. I don't know whether the regulations do or not.

Mr. Ackerson: May I interject, your Honor?

The Court: Yes.

Mr. Ackerson: If you line up the express allegations of the complaint with the very explicit allegations in the act, I think the government has factually and legally pleaded itself [300] without the Act. They rely on 481, and that is what they are bringing this case on.

The Court: I know what your contention is, and that is your argument, but, however, I don't know whether that is the law or not. I know what your argument is.

Mr. Ackerson: In line with the absolute enforceability of an injunction, your Honor, you have spoken of policing the injunction if it were issued. To begin with, it would be an absolute impossibility. The evidence would show that during the time, just September 30 to July 1, my client has carried about 134,000 passengers. This testimony indicates that maybe a couple hundred or

three or four hundred of those came off an intra-state plane and were going to get on an interstate plane.

The Court: But supposing the government could only establish you carried one? The government is still entitled to a restraining order restraining you from carrying the one passenger.

Mr. Ackerson: Well, your Honor, please, I don't know. The whole Act refers to airplanes crossing the state line. That is true even with the safety regulations. Let's suppose we fly a certain limited, negligible number, compared to our entire business, of this type of passenger. If the government is relying upon that, then it has got to construe this statute like, well, the Sherman Act, for instance, with which your [301] Honor is acquainted. In other words, the effect upon interstate commerce has to be shown, and there has been no evidence here to show effect. So even under their construction it would be a *de minimis* process.

The Court: That is not the law in air transportation.

Mr. Ackerson: No, it is not.

The Court: It is not whether it has an effect upon interstate commerce.

Mr. Ackerson: No. The plane must be in interstate commerce and the passenger's past or future intention doesn't enter into it.

The Court: You say the plane must be in interstate commerce?

Mr. Ackerson: Yes.

The Court: Where is your authority?

Mr. Ackerson: Section 121(1) of the Act.

The Court: Have you got the Act there?

Mr. Ackerson: Yes, I have got the Act here.

The Court: Let me see it. If it says the plane has to be in interstate commerce, these planes don't cross a state line, as far as the testimony here is concerned.

Mr. Ackerson: That's right. Their complaint says we fly between points in California. Here is 121, your Honor. There is nothing about passengers in there.

The Court: Did the defendants have to be in interstate [302] air transportation?

Mr. Ackerson: This is the subsequent section, your Honor, that this action is based on. Only people engaged in air transportation need certificates, and that is what they are trying to show in this case.

The Court: What is the meaning of air transportation? If they are engaged in air transportation, then they have to have a certificate of public convenience and necessity. If they are not, they don't have to have it.

Mr. Ackerson: On that question, as we state, we have no judicial construction of the Act, your Honor. We think the Act is plain on its face, but we have got the oldest and only living board member who construes the Act, we say, according to the quotations we have given in the brief, Oswald Ryan. He is still a member of the Board. He said the

federal government has never legislated on this type of thing.

The Court: I might ask Mr. Wright, then, have any of the courts ever definitely decided what is meant by air transportation?

Mr. Wright: There is no decision, no, your Honor. There was that case I mentioned the other day in the Southern District of New York.

The Court: I am not in a position to rule on this matter today. I don't know when I will be in a position to rule upon it. We have got the facts pretty well established as far as [303] these two cases are concerned. I guess the only thing I can do is take the matter under submission. If you want to file any points and authorities, I will be more than glad to give you time to file a brief, if you want to, with points and authorities.

Mr. Wright: Well, we have already filed two.

The Court: Are you satisfied with your memorandum of points and authorities on record?

Mr. Wright: Yes.

The Court: Are you satisfied with your points and authorities?

Mr. Ackerson: Your Honor, I have cited cases. If it would be of any convenience to the Court, I would elaborate upon the citations.

The Court: No. I am interested in the cases and not in your quotations. I like to read the cases as a whole.

Mr. Ackerson: Then I am satisfied.

Mr. Gardiner: I am satisfied with the points and authorities from Pacific Southwest. I would like,

however, to present two additional motions, if your Honor sees fit.

The Court: What are the motions?

Mr. Gardiner: I would like to move that the case in 16,754-HW be dismissed upon the ground that the complaint fails to state a claim upon which relief can be granted.

With respect to that motion, I am making that in the [304] type of a motion for dismissal similar to a general demurrer. I don't think the complaint states any grounds at all.

Further, I would like to move the dismissal of the case here on the ground that the facts set forth in the testimony and in the affidavits of the plaintiff and the law applicable thereto, do not present a case for which the plaintiff is entitled to relief.

The Court: I would be very happy to entertain your motions. I will take your motions under submission. But I am just a little bit doubtful as to your right at this time to make such a motion. This is a hearing upon an order to show cause why a temporary order should not be made. Now, at the conclusion of the testimony upon an order to show cause for a temporary restraining order or temporary injunction, do you have a right to make a motion to dismiss the entire case? I am rather doubtful.

Mr. Gardiner: I believe on the second motion, there could be some doubt, but it would seem to me the first or initial motion, namely, no cause of action stated, would be suitable for presentation at any stage during the proceeding. If there is no cause of action stated, it would seem to be of little

avail to continue on with the trial. I believe that motion to be similar to a general demurrer, and that was the intent in setting up that affirmatively in the answer.

The Court: Well, the whole issue in this case is whether [305] or not the defendants are engaged in air transportation. Suppose I find they are not engaged in air transportation, for the purpose of the motion, that is the temporary restraining order, can I go one step further and hold because they are not engaged in air transportation from the evidence produced, I can dismiss the case? If this was a hearing upon the merits, there would be no argument in my mind. I will take the motions under submission. I suggest you review the rules and see what the rules have to say about the timing of your motion.

Mr. Gardiner: The first motion, as I gather from a recent review, should be simultaneous with or prior to the answer. However, the pleading of a motion for judgment on the pleadings has sometimes been construed as a motion to dismiss, and the fact that the motion was raised in the answer, the allegation was made in the answer as an affirmative defense, that the complaint failed to state a cause of action, would seemingly entitle the defendants to argue that point now.

The Court: Of course, this is the situation. This is a preliminary skirmish. It is conceivable, it may not be probable, it is conceivable that at the time the matter is tried upon its merits, the government

may have more information and more evidence. Now they have presented all the evidence they have on this preliminary motion. I am justified in denying their request because the evidence doesn't sustain their contention, but am I justified in taking evidence they produce at [306] the preliminary hearing to then, ipso facto, without any other evidence at all, decide they haven't got a case and dismiss it?

Mr. Gardiner: No, your Honor. We are in agreement with that position. We are willing to go further. By making this motion to dismiss now, alleging that the complaint does not support facts to afford relief, we are conceding, for the purpose of arguing the motion, that all the allegations of the complaint are correct, namely, that the defendant is transporting a substantial number of passengers from airports in California who previously or subsequently moved into or out of the state. That is why we think it is appropriate to argue at this point.

The Court: I am just thinking about the Partmar case. In that case after the hearing upon the case in chief, I decided the counterclaims without any evidence. The Supreme Court said I was right and I had jurisdiction to do that. But the counterclaimants didn't say that. But I decided from the evidence introduced that there was no evidence of a conspiracy, and consequently if there was no conspiracy, the counterclaim would be a needless and idle act.

Mr. Ackerson: May I make a suggestion?

Mr. Gardiner: I wanted to present oral argument upon these motions.

The Court: It is not necessary to produce any oral argument. I would like to have you review the rules. I am not [307] satisfied your timing is right.

Mr. Ackerson: Your Honor, I would like to adopt the same motion Mr. Gardiner made in the Pacific Southwest case in the case No. 16,755-HW Civil, Civil Aeronautics Board vs. California Central Airlines, Inc.

Since this matter is going to be briefed on the rules, anyway, I would like to offer an additional motion that the complaint be dismissed upon the ground that the court does not have jurisdiction over the subject matter. That is based on this, your Honor, and I will brief it for you, but I would like to make that motion at this time for this reason. Taking the allegations as true, in other words, they state affirmatively we fly between one point in California and another point, that, taken in connection with the law, would seem to me sufficient grounds to enable your Honor to pass upon that jurisdictional question under this type of motion. Rule 13(h)(2) provides that whenever it appears by suggestion of parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action. That is at any time. It could be in the middle of trial. It could be any time after the filing of the complaint, as I read the rule. I will check it more thoroughly.

The Court: Let me ask Mr. Wright a question.

Mr. Wright, suppose I would find that these defendants are not engaged in air transportation. Would I have jurisdiction? In order to [308] have jurisdiction, I have got to find they are engaged in air transportation, do I not?

Mr. Wright: I would say so, your Honor.

The Court: If I find they are not, I could dismiss for want of jurisdiction.

Mr. Wright: I think so.

The Court: Fine. No problem then.

Mr. Wright: If your Honor please, while the matter of motions is being discussed here, the plaintiff has an additional motion which was filed returnable last Monday and was overlooked at that time, in 16,754-HW, to amend the complaint where we erroneously alleged that the defendant Friedkin was a Nevada corporation. We move to amend to substitute the word California for Nevada.

The Court: I don't think there will be any objection. Motion granted.

Mr. Gardiner: No objection. Possibly counsel might prefer to amend to also allege the principal place of business of the defendant is in San Diego, as alleged in our answer.

The Court: What did they allege?

Mr. Gardiner: They alleged Burbank. The company is in Burbank in business.

The Court: Does it make any difference for the purposes of this action?

Mr. Gardiner: No. [309]

The Court: I will take the matter under submission, but I can't offer you any information as

to when I will come to a conclusion, as next month this court will be dark, so you will have to wait until probably after the first of September. Inasmuch as we have no published opinions in regard to this important subject, I think maybe I will write an opinion, a memorandum setting forth the facts and the conclusions of the court, so that next time you can go into court and say that there is an opinion on record.

Mr. Wright: We will appreciate that, no matter which way it goes.

Mr. Gardiner: Judgment on pleadings is submitted, too?

The Court: Submitted. I will take that under submission.

Mr. Ackerson: If your Honor please, I said I was satisfied with my points and authorities on file. I would like to file a few excerpts.

The Court: Any party may submit additional points and authorities any time up to September 1. It may be some court will make a decision between now and September 1, that will determine this matter.

Court will stand in recess now. [310]

Certificate

We hereby certify that we are duly appointed, qualified, and acting official court reporters of the United States District Court for the Southern District of California.

We further certify that the foregoing is a true and correct transcript of the proceedings had in the above-entitled cause on the date or dates specified therein, and that said transcript is a true and correct transcription of our stenographic notes.

Dated at Los Angeles, California, this 17th day of November, 1954.

/s/ S. J. TRAINOR,
Official Court Reporter;

/s/ SAMUEL GOLDSTEIN,
Official Court Reporter;

/s/ ARLENE JENKINS,
Official Court Reporter.
(Pro Tem.)

[Endorsed]: Filed February 2, 1955. [311]

